

Decision of the Dispute Resolution Chamber

passed on 15 July 2021

regarding an employment-related dispute concerning the player Alexandre Cardoso Garcia

COMPOSITION:

Omar Ongaro (Italy), Deputy Chairman

Stéphane Burchkalter (France), member

MD Abu Nayeem Shohag (Bangladesh), member

CLAIMANT:

Alexandre Cardoso Garcia, Brazil

Represented by Wallace Oliveira

RESPONDENT:

KF Turbina, Albania

I. FACTS OF THE CASE

1. On 10 September 2020, the Brazilian player, Alexandre Cardoso Garcia (hereinafter: *Claimant*), and the Albanian club, KF Turbina (hereinafter: *Respondent*) signed an employment contract (hereinafter: *first contract*) valid as from 11 September 2020 until 11 September 2022.
2. In accordance with section 1 of the first contract, the Claimant was entitled to the following monthly remuneration:
 - a) "50.000,00 LEK net salary gross;
 - b) 50.000,00 LEK sports diet; and
 - c) 50.000,00 LEK will be paid for the player rented home"
3. Section 2 of the first contract, stipulated the following:

"if other clubs are interested in the sportsman services and would like to enquire his services while he is contract, they must pay 150.000 EURO"
4. On 17 September 2020, the Claimant, and the Respondent concluded a second employment contract (hereinafter: *second contract*) valid as from 17 September 2020 until 17 July 2022.
5. According to section 1 of the second contract, the Claimant was, *inter alia*, entitled to the following monthly remuneration:
 - a) "30.000,00 LEK net salary gross;
 - b) 95.000,00 LEK sports diet; and
 - c) 370.000,00 LEK signing fee "
6. According to the Claimant, in October 2020, the Respondent and the Albanian club, KF Bylis Ballshi concluded a loan agreement (hereinafter: *"the loan agreement"*) for the temporary transfer of the Claimant from the Respondent to the third club, for the period between 1 October 2020 until 1 October 2021.
7. In accordance with the loan agreement, the third club allegedly undertook to pay to the Claimant a monthly salary of LEK 30,000 and the Respondent would remain responsible for payment of the remainder of the remuneration agreed to between the parties as detailed in the second contract. However, the Respondent failed to comply with its contractual obligations and made no payment to the Claimant during the loan period.
8. On 26 March 2021, the Claimant indicated that the loan agreement was terminated, stipulating the following:

"The loan with Bylis ended after the player be deemed to have a just cause to terminate his contract since Bylis had allowed a month to lapse without the player receiving a visa and thus he was residing illegally in the country. The player had no option but to leave, as a result. As such, the behaviour of the club Bylis was considered as a breach of contract without valid reasons."

9. In its claim the Claimant indicated that the Respondent failed to pay him the following amounts during the loan period:

- LEK 370,000 – as signing fee

The following amounts according to the Claimant corresponds to (LEK 100,000 remuneration per month payable under the first contract plus LEK 125,000 remuneration payable per month under the second contract):

- LEK 225,000 – September 2020
- LEK 225,000 – October 2020
- LEK 225,000 – November 2020
- LEK 225,000 – December 2020
- LEK 225,000 – January 2021
- LEK 225,000 – February 2021
- LEK 225,000 – March 2021

10. The Claimant indicated that the Respondent failed to pay to him the total amount of LEK 2,005,000 relating to delayed monthly salaries and the outstanding signing fee as agreed to in the contracts concluded between the parties.

11. On 26 March 2021, the player sent a default notice to the Respondent, granting it a deadline of 15 days to remedy its default, by stipulating the following:

"Between the loan and its end, no remuneration due by your club was paid. Up till now the athlete did not receive the month values of the standard contract that should be paid by KF TURBINA CËRRIK during the loan with Bylis at the amount of 100.000,00 LEK (one hundred thousand Albanian LEK) as a month salary.

Up till now the athlete did not receive the whole values that should be paid according to the agreement signed by the parties, which provided the amount of 125.000,00 LEK (one hundred twenty-five thousand Albanian LEK) as a month salary.

Still now have not been paid the amount of 370.000,00 LEK corresponding as singing fee related to Section 1 as provided in the agreement.

Having saying that, the player is entitled to claim late payment interest & compensation charges. The amount to pay as at today currently stands at 2.005.000, 00 LEK (two million and five thousand Albanian LEK)."

12. The Respondent failed to comply with the terms of the default notice.
13. On 11 April 2021, the Claimant terminated his contract with the Respondent.

II. PROCEEDINGS BEFORE FIFA

14. On 12 April 2021, the Claimant filed the claim at hand before FIFA.

a. The claim of the Claimant

15. The requests for relief of the Claimant, were that the FIFA DRC:
 - (a) *establish that the employment contract signed between the parties are valid and binding to both parties;*
 - (b) *establish that the Respondent has unlawfully breached the parties' employment contract during the protected period;*
 - (c) *establish that the Respondent has unilaterally terminated the employment contract with the Claimant without just cause;*
 - (d) *condemn the Respondent to pay to the Claimant, the outstanding salaries in the amount of LEK 2,005,000,00 plus 5% interest p.a. from the respective due dates corresponding to:*
 - *LEK 370,000 – as signing fee*

The following amounts according to the Claimant corresponds to (LEK 100,000 remuneration per month payable under the first contract plus LEK 125,000 remuneration payable per month under the second contract):

- *LEK 225,000 – September 2020*
- *LEK 225,000 – October 2020*
- *LEK 225,000 – November 2020*
- *LEK 225,000 – December 2020*
- *LEK 225,000 – January 2021*
- *LEK 225,000 – February 2021*
- *LEK 225,000 – March 2021*

- (e) *condemn the Respondent to pay to the Claimant, compensation for breach of contract corresponding to the residual value of the contract for the period April 2021 to September 2022 in the amount of LEK 4,340,000 plus 5 % interest p.a. from the respective due dates*
- (f) *impose a sporting sanctions on the Respondent – “consisting on a ban from registering any new players, either nationality or internationality, for 2 registration periods, as a consequence of having unlawfully breached the parties’ employment contract during the Protected Period in the matter at hand”; and*
- (g) *condemn the Respondent to bear, the legal expenses incurred by the Claimant in the matter at hand*

b. Position of the Respondent

16. In its reply to the claim, the Respondent indicated the following:

“the player is not our player from October 2020, we transfer the player to K.F. Bylisi and if he has a claim he should look from Bylisi not from us and the lawsuit should be against Bylisi not against us.”

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

17. 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 submitted to FIFA on 12 April 2021 and presented for a decision on 15 July 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.
18. 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 (February 2021 edition), 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 an Albanian club.
19. 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 (February 2021 edition), and considering that the present claim was lodged on 12 April 2021, the February 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

20. 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.
21. 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

22. 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.

i. Main legal discussion and considerations

23. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that on 10 September 2020, the Claimant and the Respondent concluded an employment contract valid as from 11 September 2020 until 11 September 2022.
24. Moreover, the Chamber noted that on 17 September 2020, the parties signed a second employment agreement, valid from 17 September 2020 until 17 July 2022.
25. The members of the Chamber, however concluded that the second contract signed between the parties on 17 September 2020, superseded the first contract as signed on 10 September 2020. In this regard, the DRC decided that the present dispute and the consequences thereof shall be based on the terms and conditions agreed to in the second employment contract as concluded between the parties on 17 September 2020.
26. The DRC observed that the Claimant lodged a claim before FIFA against the Respondent, arguing that the Respondent failed to comply with its financial contractual obligations; hence, it terminated the contract with the Respondent on 11 April 2021.

27. In this context, the Chamber acknowledged that its task was to determine whether the contract was terminated by the Claimant with or without just cause and to decide on the consequences thereof.
28. The DRC observed that the Respondent in its reply to the claim argued that the Claimant is not a player of the Respondent as in October 2020, he was transferred to another Albanian club, KF Bylis Ballshi, i.e. the club where he was on loan and that as a result thereof, the Claimant should seek compensation for breach of contract from the said club.
29. In this regard, the members of the Chamber noted that the Respondent failed to challenge the allegations of the Claimant as to his entitlements detailed in his claim. What is more, the Respondent even explicitly confirmed that the loan of the player to KF Bylis Ballshi took place.
30. With regard to the amounts requested by the Claimant from the Respondent during the loan period with the club, KF Bylis Ballshi, the Chamber deemed it vital to outline that according to its well-established jurisprudence, in case the player is loaned to another club, the effects of the employment contract with the club of origin are temporarily suspended, unless the club of origin and the player have otherwise agreed.
31. Having said that, the DRC took note that the Claimant did not submit any documentation to support its argument that the Respondent was still responsible for certain financial aspects towards the Claimant during the loan period. The Chamber therefore concluded that the Claimant is, not entitled to receive any remuneration from the Respondent for the loan period with the club KF Bylis Ballshi, which is the period from 1 October 2020 until date of termination of the loan i.e. 26 March 2021.
32. Regarding the requested amounts after the termination of the loan with KF Bylis Ballshi i.e. after 26 March 2021, the Chamber recalled that the contract signed between the Claimant and the Respondent was valid until 17 July 2022. Therefore, the Chamber concluded that the Claimant is, in principle, entitled to receive remuneration from the Respondent under the terms of the contract after the termination of the loan agreement with KF Bylis Ballshi, since the effects of the employment contract with the club of origin are understood as resumed.
33. The members of the Chamber took into account that the Respondent was already in breach of its obligations towards the Claimant prior to commencement of the loan period. The Chamber noted that it remained uncontested that the Respondent did not pay the Claimant the signing fee of LEK 370,000 due on 17 September 2020 and outstanding remuneration in the amount of LEK 58,333, corresponding to his *pro rata* salary for September 2020, which was due on 1 October 2020.
34. On account of the above, the DRC therefore had no other option but to reject the arguments brought forward by the Respondent that the Claimant should simply revert to KF Bylis Ballshi in relation to his financial entitlements. After having analysed all the

documentation on file and circumstances described by the parties, the members of the Chamber came to the conclusion that on 11 April 2021, the Claimant terminated the contract with just cause in accordance with art. 14 of the Regulations, as a considerable amount of the remuneration the Claimant was contractually entitled to, remained unpaid by the Respondent.

ii. Consequences

35. Having stated the above, the members of the Chamber concurred that the Respondent must fulfil its obligations in accordance with the general legal principle of "*pacta sunt servanda*" and that the Respondent is liable to pay to the Claimant his outstanding remuneration in the amount of LEK 58,333 and the signing fee of LEK 370,000.
36. Furthermore, based on its well-established jurisprudence as well as taking into account the Claimant's request, the Chamber decided to award 5% interest *p.a.* on the above amounts from the respective due dates until the date of effective payment.
37. In continuation, the Chamber decided that, taking into consideration art. 17 par. 1 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract in addition to any outstanding salaries on the basis of the relevant employment contract.
38. In this context, the Chamber outlined that, in accordance with the said provision, 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.
39. In application of the relevant provision, the Chamber held that it first had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
40. Subsequently, and in order to evaluate the compensation to be paid by the Respondent, the members of the Chamber took into account the remuneration due to the Claimant in accordance with the employment contract as well as the time remaining on the same contract, along with the professional situation of the Claimant after the early termination occurred. In this respect, the Chamber pointed out that at the time of the termination of the employment contract on 11 April 2021, the contract would run for another 15 months (i.e. the period between April 2021 and July 2022).

41. Consequently, taking into account the financial terms of the contract, the Chamber concluded that the remaining value of the contract as from its early termination by the Claimant with just cause until the regular expiry of the contract amounts to LEK 1,943,548.38 and that such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.
42. In continuation, the DRC remarked that following the early termination of the employment contract at the basis of the present dispute, the Claimant did not sign a new employment agreement with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. Therefore, no further mitigation of the amount of compensation shall take place.
43. In conclusion, the DRC decided that the Respondent is liable to pay the total amount of LEK 1,943,548.38 to the Claimant as compensation for breach of contract without just cause, which is considered by the DRC, to be a reasonable and justified amount as compensation.
44. Moreover and in line with the Chamber's well-established jurisprudence, the DRC decided to award 5% interest *p.a.* on the above amounts as from 12 April 2021, i.e. date of claim.
45. Furthermore, the Chamber rejected any claim for legal expenses and procedural compensation in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber's respective longstanding jurisprudence in this regard.
46. The Chamber concluded its deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

iii. Compliance with monetary decisions

47. Finally, 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.
48. 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.
49. 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.

50. 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.
51. 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.

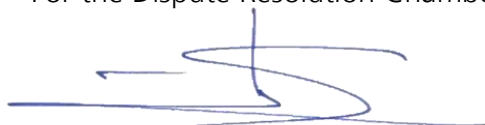
d. Costs

52. 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.
53. 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.
54. 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, Alexandre Cardoso Garcia, is partially accepted.
2. The Respondent, KF Turbina, has to pay to the Claimant, the following amount:
 - LEK 370,000 as outstanding signing fee plus 5% interest *p.a.* as from 18 September 2020 until the date of effective payment;
 - LEK 58,333 as outstanding remuneration plus 5% interest *p.a.* as from 1 October 2020 until the date of effective payment; and
 - LEK 1,943,548 as compensation for breach of contract plus 5% interest *p.a.* as from 12 April 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

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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