

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

passed on 28 July 2021

regarding an employment-related dispute concerning the player Ondrej Celustka

### **BY:**

**Johan van Gaalen** (South Africa), DRC Judge

### **CLAIMANT:**

**Ondrej Celustka, Czech Republic**

Represented by Mr Sami Dinc

### **RESPONDENT:**

**Antalyaspor Spor, Turkey**

Represented by Mr Muhammed Kurd

## I. FACTS OF THE CASE

1. On 16 July 2018 the Czech player, Mr Ondrej Celustka (hereinafter: *the player* or *the Claimant*), and the Turkish club, Antalyaspor Spor (hereinafter: *the club* or *the Respondent*) concluded an employment contract, valid for the 2018/2019 and 2019/2020 seasons.
2. By means of emails exchanged between the parties on 21 and 22 December 2020, the parties concluded a settlement agreement regarding the amounts due to the player (hereinafter: *the settlement agreement*).
3. In accordance with the settlement agreement, the club undertook to pay to the player the total amount of EUR 275,000, as follows: EUR 91,666 on 31 December 2020; EUR 91,666 on 29 January 2021 and EUR 91,668 on 26 February 2021.
4. The settlement agreement stipulates, in its 3rd paragraph, the following: "*As per the agreement of the Parties, Club Antalyaspor A.S. hereby declares and accepts that in case of a delay in the payment of either instalment stipulated above, the full amount of 275,000.- Euro will become due immediately and without further notice*".
5. By means of his letter dated 1 February 2021, the player put the club in default of payment in the amount of EUR 183,334, corresponding to the first instalment of the settlement agreement, given that the Claimant allegedly failed to pay the second instalment by 20 January 2021.

## II. PROCEEDINGS BEFORE FIFA

### a. The claim of the Claimant

6. On 17 February 2021, the Claimant lodged a claim against the Respondent before FIFA, requesting to be awarded the total amount of EUR 183,334, plus 5% interest *p.a.* as from 30 January 2021, broken down as follows: EUR 91,666 corresponding to the second instalment of the settlement agreement and EUR 91,668 corresponding to the third instalment of the settlement agreement.
7. In his claim, the player argued that, despite having concluded a settlement agreement and having put the Respondent in default of payment, the latter failed to comply with its financial obligations towards him. Regarding the acceleration clause, the Claimant held that it was the Respondent who proposed to include the said clause and that it was activated upon the Respondent's failure to pay the second instalment of the settlement agreement.

### b. Position of the Respondent

8. In its reply, the Respondent acknowledged being in default of payment of the second and third instalments of the settlement agreement.

9. The Respondent argued that the lack of payment was a consequence of the financial consequences arisen upon the Covid-19 pandemic. Moreover, the Respondent highlighted that the Board of Directions of the club changed in February 2021 and that the new appointed Board *"found themselves in a serious financial crisis"*. In this context, the Respondent maintained that the new Board has *"always tried to communicate with the [player] to discuss the [settlement agreement] conditions in goodwill despite the Respondent's Covid-19 financial crisis but unfortunately, the [player] never showed good faith the Respondent's tries"*.
10. As to the default interest requested, the Respondent argued that the 5% default interest was not *"determined"* in the settlement agreement and that the said request cannot be accepted by the Respondent.
11. In its request for relief, the Respondent requested FIFA to reject the request regarding the default interest, reduce the amount due to the player in view of the negative impact of the Covid-19 pandemic and order the player to bear *"the legal and other costs incurred in connection with this case"*.

### III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER JUDGE

#### a. Competence and applicable legal framework

12. 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, the DRC judge took note that the present matter was presented to FIFA on 17 February 2021 and submitted for decision on 28 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.
13. 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. a) and b) of the Regulations on the Status and Transfer of Players (edition February 2021), the Dispute Resolution Chamber judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Czech player and a Turkish club.
14. Subsequently, the DRC judge analysed which regulations should be applicable as to the substance of the matter. In this respect, the DRC judge 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 17 February 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**

15. 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.
16. 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**

17. The competence of the DRC judge 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.

**i. Main legal discussion and considerations**

18. The foregoing having been established, the DRC judge moved to the substance of the matter, and took note of the fact that the Claimant requested to be awarded the 2<sup>nd</sup> and 3<sup>rd</sup> instalments of the settlement agreement concluded with the Respondent, in the total amount of EUR 183,334, plus 5% interest *p.a.* as from 30 January 2021.
19. In this respect, the DRC judge observed that, in his claim, the Claimant argued that despite having put the Respondent in default of payment regarding the outstanding amounts due to him, the latter only complied with the payment of the first instalment of the settlement agreement, remaining the 2<sup>nd</sup> and 3<sup>rd</sup> instalments thereof unpaid.
20. On its part, noted the DRC judge, the club acknowledged being in default of payment of the 2<sup>nd</sup> and 3<sup>rd</sup> instalments of the settlement agreement and maintained that the non-payment was a consequence of the situation of financial distress that the club faced upon the Covid-19 pandemic. In this context, the Respondent requested FIFA to reduce the amount due to the player and requested FIFA to reject the grant of a 5% default interest *p.a.*, given that it was not contractually agreed.
21. The above having been established, the DRC judge pointed out that the Respondent acknowledged having concluded the settlement agreement and being in default of payment of the 2<sup>nd</sup> and 3<sup>rd</sup> instalments thereof. As to the petition of the Respondent to reduce the amounts

due to the player, the DRC judge stressed that the Respondent failed to provide any valid argument in support of its petition.

22. In this context, explained the DRC judge, even though the Covid-19 pandemic has had and is having an important financial impact in the world in general and in the football sector in particular, the said situation does not justify the lack of payment of amounts contractually agreed.
23. What is more, continued the DRC judge, it is important to point out that the settlement agreement was concluded at the end of December 2020, at a time when the financial impact of Covid-19 was a reality of which the Respondent was aware of should have been aware. Thus, emphasized the DRC judge, the allegations of the Respondent in this regard cannot be upheld.
24. Concerning the *petitum* of the Respondent to reject the claim of the Claimant regarding the grant of a 5% default interest *p.a.*, since it was not contractually agreed, the said argument cannot be upheld either, given that default interest of 5% *p.a.* does not need to find a contractual basis, but a jurisprudential and legal basis instead, insofar it is granted under the framework of the DRC jurisprudence and art. 73 of the Swiss Code of Obligations.

## ii. Consequences

25. 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.
26. In view of the above-mentioned considerations, the DRC judge determined that, by virtue of application of the legal principle, *pacta sunt servanda*, the Claimant is entitled to receive outstanding remuneration in the total amount of EUR 183,334, corresponding to the 2<sup>nd</sup> and 3<sup>rd</sup> instalments of the settlement agreement.
27. In addition, the DRC judge concluded that the Claimant is also entitled to a default interest of 5% *p.a.* –which finds its legal basis on the constant jurisprudence of the DRC and DRC judge– on the amount of EUR 183,334 as from 30 January 2021 (the acceleration clause was validly activated and interest shall run as from the day following the due date of the 2<sup>nd</sup> instalment of the settlement agreement, *i.e.* interest shall be awarded as from 30 January 2021).

## iii. Compliance with monetary decisions

28. Finally, taking into account the consideration under number 14. above, 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.

29. 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.
30. 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.
31. 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.
32. 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**

33. 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.
34. 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.
35. Lastly, the DRC judge concluded its deliberations by rejecting any other requests for relief made by any of the parties.

## **IV. DECISION OF THE DRC JUDGE**

1. The claim of the Claimant, Ondrej Celustka, is accepted.
2. The Respondent, Antalyaspor Spor, has to pay to the Claimant, the following amount:
  - EUR 183,334 as outstanding remuneration, plus 5% interest *p.a.* as from 30 January 2021 until the date of effective payment.

2. Full payment (including all applicable interest) shall be made to the bank account set out in the enclosed Bank Account Registration Form.
3. 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.
4. 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](#).
5. This decision is rendered without costs.

For the 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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