

Decision of the Dispute Resolution Chamber

passed on 12 August 2021

regarding an employment-related dispute concerning the player Manuel Da Costa

COMPOSITION:

Geoff Thompson (England), Chairman
Tomislav Kasalo (Croatia), member
Abu Nayeem Shohag (Bangladesh), member

CLAIMANT:

Manuel Da Costa, France
Represented by Selçuk Demir

RESPONDENT:

Buyuksehir Belediye Erzurumspor, Turkey

I. FACTS OF THE CASE

1. On an unspecified date, the Claimant and the Respondent concluded an employment agreement (hereinafter: *the first contract*), valid between 14 January 2021 and 31 May 2021, which did not contain any financial entitlements of the Claimant.
2. Furthermore, on an unspecified date, the Claimant and the Respondent concluded another employment agreement (hereinafter: *the second contract*), valid between 31 January 2020 until 31 May 2020, with an automatic extension option for one year (for the sporting season 2020/2021), in case the Claimant would be fielded in the starting 11 of the Respondent's first team in 10 Super League matches and Turkish Cup matches, based on which the Claimant was entitled to a total amount of EUR 40,000, payable as follows:

Season 2019/2020:

- EUR 10,000 on 28 February 2020;
- EUR 10,000 on 2 April 2020
- EUR 10,000 on 30 April 2020;
- EUR 10,000 on 31 May 2020.

Season 2020/2021:

- EUR 100,000 on 31 July 2020;
- EUR 35,000 on 31 August 2020;
- EUR 35,000 on 1 October 2020;
- EUR 35,000 on 31 October 2020;
- EUR 35,000 on 30 November 2020;
- EUR 35,000 on 2 January 2021;
- EUR 35,000 on 31 January 2021;
- EUR 35,000 on 28 February 2021;
- EUR 35,000 on 1 April 2021;
- EUR 35,000 on 30 April 2021;
- EUR 35,000 on 31 May 2021.

3. On 17 April 2021, the Claimant and the Respondent concluded a settlement agreement (hereinafter: *the settlement agreement*), based on which the parties agreed to terminate the contract dated 14 January 2021 and based on which (according to article 3), the Claimant was entitled to receive the following amounts:
 - EUR 114,000 due on 20 May 2021;
 - EUR 114,000 due on 30 June 2021;
 - EUR 113,000 due on 31 July 2021.
4. What is more, in the settlement agreement, the parties agreed that '*in case BB Erzerumspor does not proceed to pay the overdue amounts at the end of the aforementioned time-*

frame, i.e. 3 business days of grace period, an additional fine of EUR 7,500 shall accrue without any further notification to be issued ...'.

5. Additionally, clause 5 of the settlement agreement contained the following clause: *'Should BB Erzurumspor fail to comply with the payments stipulated under article 3 / point a-b-c and BB Erzurumspor persist to fail to remedy the debt despite being put in default by being granted a 3 days of grace period, BB Erzurumspor herewith accepts, undertakes and declares that Player shall be entitled to ask for the annulment of the present agreement within 7 days calendar days following the end of the 3 days of grace period. Once the player wishes to leave the present agreement without effect within 7 days following the end of the aforementioned 3 days of grace period, due to the BB Erzurumspor's breach, all the subsequent forthcoming instalment shall deemed due and payable with immediate effect'.*
6. On 24 May 2021, the Claimant put the Respondent in default for the amount of EUR 114,000 due on 20 May 2021, however to no avail.

II. PROCEEDINGS BEFORE FIFA

7. On 8 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

8. In his claim, contrary to what is uploaded in the TMS, the Claimant explains that his contract was valid between 14 January 2021 and 31 May 2021, and that he was entitled to an amount of EUR 400,000, payable in 5 instalments of EUR 80,000 each.
9. The requests for relief of the Claimant, as amended, were the following:

To be awarded the following amounts, plus 5% interest *p.a.* as from the 31st day after the notification of the decision:

- EUR 341,000 as outstanding amount as per the settlement agreement;
- EUR 7,500 as penalty as per the settlement agreement;
- EUR 240,000 as additional compensation.

b. Position of the Respondent

10. The Respondent argued that due to the outbreak of the COVID-19 pandemic, it is a bad financial situation and could not meet its financial obligations as per the settlement agreement, but wished to negotiate on an amicable solution with the Claimant.
11. The Respondent further requests to not uphold the penalty.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

12. 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 8 June 2021 and submitted for decision on 12 August 2021. Taking into account the wording of art. 21 of the 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 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. a) and 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 French player and a Turkish club.
14. 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 4 June 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 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.
16. 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

17. 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

18. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute whether the non-compliance with the settlement agreement can be upheld against the Respondent, in view of the outbreak of the COVID-19 pandemic.
19. In this context, the Chamber acknowledged that its task was to determine whether or not in the matter at hand the Respondent is liable to pay the amounts stipulated in the settlement agreement to the Claimant.
20. In this respect, the members of the Chamber noted that as per the settlement agreement, an amount of EUR 341,000, which fell due to the Claimant, remained contested. Whereas the Respondent is not contesting that said amount is strictly spoken due to the Claimant, it argued that in view of its bad financial situation as a result of the outbreak of the COVID-19 pandemic, it preferred to conclude an amicable settlement with the Claimant.
21. What is more, the Respondent is of the opinion that the penalty should not be awarded in view of the aforementioned financial situation of its club.
22. Entering into the substance of the matter at hand, the Chamber remarked that in its submissions, the Respondent stated that the COVID-19 outbreak had made it difficult to make the payments requested by the Claimant. In this respect, the DRC highlighted that the Respondent had not invoked such circumstance to the Claimant, as it had failed to reply to the default notice sent by the Claimant.
23. In this context, the DRC further considered that the arguments raised by the Respondent cannot be considered a valid reason for non-payment of the monies claimed by the Claimant, in other words, the reasons brought forward by the Respondent in its defence do not exempt the Respondent from its obligation to fulfil its contractual obligations towards the Claimant.
24. As such, the Chamber concluded that it could not be established that there was a causal relation between the alleged financial impact of the COVID-19 outbreak on the Respondent's finances and the debt contracted by the Respondent towards the Claimant.
25. What is more, as to the contractually agreed penalty, the members of the Chamber noted that such clause was freely entered into by the parties. Moreover, a penalty in the amount of EUR 7,500 is both considered reasonable and proportionate.

26. In view of all the above, bearing in mind its extensive jurisprudence according to which financial difficulties cannot be held as a valid reason to the non-payment of contractually agreed payments, the DRC decided to reject the argumentation put forward by the Respondent in its defence.

ii. Consequences

27. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of the settlement agreement committed by the Respondent.
28. Consequently, the Chamber decided that in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant the amount of EUR 341,000 plus interest at the rate of 5% *p.a.* as from 17 September 2021, i.e. the 31st day after the notification of the decision.
29. In addition, the Chamber decided that the Respondent is liable to pay to the Claimant the amount of EUR 7,500 relating to the penalty fee in accordance with penalty clause agreed upon in the settlement agreement.
30. Subsequently, the Dispute Resolution Chamber decided to reject the Claimant's claim pertaining to an additional compensation in the amount of EUR 240,000, as the criteria for awarding said additional compensation, as laid down in art. 17 par. 1 ii) of the Regulations, are clearly not met, as there is not termination without just cause of a valid and binding employment contract.
31. The Chamber concluded its deliberations in the present matter by rejecting any further request filed by the Claimant.

iii. Compliance with monetary decisions

32. Finally, taking into account the consideration under number 28. above, 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.
33. 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.
34. 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.

35. 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.
36. 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

37. 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.
38. 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.
39. 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, Manuel Da Costa, is partially accepted.
2. The Respondent, Buyuksehir Belediye Erzurumspor, has to pay to the Claimant, the following amount:
 - EUR 341,000 as outstanding amount, plus 5% interest *p.a.* as from 17 September 2021 until the date of effective payment;
 - EUR 7,500 as penalty fee.
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 Garcia 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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