

Decision of the Dispute Resolution Chamber

passed on 15 July 2021

regarding an employment-related dispute concerning the player Andriy Derkach

COMPOSITION:

Omar Ongaro (Italy), Deputy Chairman
Stéphane Burchkalter (France)
Abu Nayeem Shohag (Bangladesh), member

CLAIMANT:

Andriy Derkach, Ukraine

RESPONDENT:

FC Dnepr-Mogilev, Belarus

I. Facts

1. On 5 August 2018, the player and the Belarussian club, FC Dnepr, concluded an employment contract valid as from 10 August 2018 until 3 December 2018.
2. The contract stipulated the following remuneration in favour of the player:
"1.3.1. standard pay (wage rate) as of this Contract date, in the amount of BYN 159 36 (One hundred fifty nine Belarussian rubles, thirty six kopecks), shall be determined based on the category one wage rate of BYN 34.00, the wage ratio of 3.72, which corresponds to category 16 of the Single wage rate of employees in the Republic of Belarus, and the adjustment ratio of 1.260."
3. On 5 November 2018, FC Dnepr issued an order, by means of which the "high performance bonus" of the player from 1 October 2018 until 31 October 2018 was reduced by BYN 2 616.15 due to the poor performance of the club.
4. On 30 November 2018, FC Dnepr issued an order, by means of which the "high performance bonus" of the player from 1 November 2018 until 30 November 2018 was reduced by BYN 3 363.00 due to the poor performance of the club.
5. On 4 December 2018, the player sent a request to the Belarus Football Federation, stating that he did not receive his salary in full for October and November 2018.
6. On 17 March 2021, the Claimant sent a default note to the Respondent for outstanding remuneration in the total amount of BYN 5 979,15, setting a time limit of 15 calendar days (until 2 April 2021) as of receipt of the notice in order to remedy the default.
7. On 29 March 2021, Dnepr-Mogilev replied as follows:
*"You should have sent your claims, duly registered as the creditor's claims, directly to the address of the legal entity-closed joint-stock company "Football Club" Dnepro-MCHZ.
(...)
The state institution "Football Club" Dnipro-Mogilev" has no relation to CJSC "Football Club "Dnepro-MCHZ", with which you were in an employment relationship, has no relation. These are two different legal entities that existed before and exist today with different payer registration numbers (UNP)."*
8. On 9 June 2021, the Claimant lodged a claim for outstanding remuneration, and requested the payment of BYN 5,979.15 net, plus 5% interest p.a. as from the due dates.
9. The Claimant explained that FC Dnepr-Mogilev shall be understood as the sporting successor of FC Dnepr, and referred to the Decision of FIFA passed on 10 December 2020 (20-00452: Player Aleksey Kurzenev, Russia vs. Club FC Dnepr Mahilyow).
10. According to the Claimant, together with other players of FC Dnepr, he tried to lodge collective claim before Belarus Football Federation on 4 December 2018, but the respective bodies of the national association did not appear to be in position to further proceed with this request due to bankruptcy proceedings of the legal entity represents the club.

11. According to the Claimant, the Claimant he received the chance to protect his rights in proper manner only after 1 January 2020, which should be recognized as a start of the time limit calculation.
12. Despite being invited to do so, the Respondent failed to reply to the claim.

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. Having this in mind, the DRC stressed on the content of art. 25 par. 5 of the Regulations on the Status and Transfer of Players which reads as follows: *"The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case"*.
4. In view of the above, the Chamber had to determine which is the event giving rise to the present dispute. In doing so, the DRC deemed it important to emphasise the claim is related to remuneration allegedly due in October and November 2018.
5. Having said this, the Chamber recalled that the claim was lodged on 9 June 2021, i.e. clearly more than two years after said salaries would have been due.
6. On account of all the above, and considering that more than two years have elapsed between the event giving rise to the dispute, the Chamber concluded that the Claimant's claim must be considered barred by the statute of limitations in accordance with art. 25 par. 5 of the Regulations.
7. In light of the above, the DRC decided that the claim of the Claimant is inadmissible.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Andriy Derkach, is inadmissible.

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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