

Decision of the Dispute Resolution Chamber

passed on 28 July 2021

regarding an employment-related dispute concerning the player Ludovic Erhard

BY:

Johan van Gaalen, DRC Judge

CLAIMANT:

Ludovic Erhard, France
Represented by UNFP

RESPONDENT:

CS Pandurii Targu Jiu, Romania

I. Facts

1. The parties concluded an employment contract valid as from 1 July 2019 until 30 June 2021.
2. Following art. 4.1 of the contract, the player was entitled to RON 2,3000 net per month, payable "until the 25th of each month".
3. Art. 4.1.1 of the contract stipulated the following:
"The club to ensure for the player one plane ticket, round trip, for the route Romania-Japan (Tokyo)"
4. On 15 March 2020, the parties concluded an agreement with the following contents:
"Art. 1. In agreement with CS Pandurii Lignitul Tg. Jiu and the player, they agree to pay all the salaries before 31 December 2019 untill the date of 01.09.2020."
5. On 11 March 2021, the player sent a default notice, requesting the payment of outstanding remuneration since July 2019 until February 2021, for the total amount of RON 46,000 (i.e. 2,300*20), and referring to art. 14 bis of the Regulations.
6. On 4 April 2021, the player sent a termination letter to the club, indicating the following:
"By registered letter dated 11 March 2021 and received on 15 March 2021, I asked you to pay me my unpaid salaries since the beginning of my employment contract. Unfortunately, you still have not paid me those amounts, and you owe me today the total amount of 46.000 lei and my plane tickets round trip, as already explained in the previous letter sent. Therefore, I inform you that I have no other choice than terminating my contract with just cause and immediate effect. I reserve the right to file a claim with the Dispute Resolution Chamber for breach of contract by your club."
7. According to the information contained in the TMS, the player transferred "out of contract" to the Gibraltar club, Mons Calpe SC, on 29 June 2021.
8. On 16 April 2021, the Claimant lodged a claim before FIFA and requested the payment of the following amounts:
 - RON 48,300 as outstanding remuneration, plus 5% interest p.a. from the due date of each payment of each of the payments detailed as follows:
 - o LEI 27,600 as outstanding salaries for the 2019-2020 season (salaries from July 2019 until June 2020, i.e. 2,300*12);
 - o LEI 20,700 as outstanding salaries for the 2020-2021 season (salaries from July 2020 until March 2021, i.e. 2,300*9).
 - A return air ticket between Romania and Japan (Tokyo) for the 2019-2020 season for an amount determined by FIFA Travel, plus 5% interest p.a. from the date of the award. 2020 season for an amount determined by FIFA Travel, plus 5% interest p.a. as of date of 1 July 2020 ;
 - RON 6,900 as compensation for the Club's termination without just cause, plus 5% interest p.a. from the date of termination of the Contract, plus interest p.a. from the date of termination of the Contract,

- A return air ticket between Romania and Japan (Tokyo) for the 2020-2021 season for an amount determined by FIFA Travel, plus 5% interest p.a. as of the date of termination of the Contract termination of the Contract ;
 - EUR 5,000 as legal costs.
9. 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 DRC Judge 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 DRC Judge 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 DRC Judge is competent to deal with matters which concern employment-related disputes with an international dimension between players and clubs.
3. In continuation, the DRC Judge analysed which edition of the Regulations of the Status and Transfer of Players should be applicable to the present 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 Players, and considering the date when the claim was lodged, the February 2021 edition of the aforementioned regulations (hereinafter: *the Regulations*) is applicable to the matter at hand.
4. With the above having been established, the DRC Judge entered into the substance of the matter. In doing so, it started to acknowledge the facts of the case as well as the documents contained in the file. However, the DRC Judge emphasized that in the following considerations it will refer only to facts, arguments and documentary evidence which it considered pertinent for the assessment of the matter at hand.
5. In this respect, the Judge noted that parties concluded an employment contract valid as from 1 July 2019 until 30 June 2021, as well as that, following art. 4.1 of the contract, the player was entitled to RON 2,300 net per month, payable "until the 25th of each month".
6. Subsequently, the Judge noted that the Claimant lodged a claim before FIFA, arguing that he terminated the contract with just cause due to the existence of outstanding salaries.
7. In particular, the Judge observed that, according to the Claimant, he terminated the contract on 4 April 2021 after having put the club in default on 11 March 2020, due to the existence of outstanding remuneration since July 2019 until February 2021, for the total amount of RON 46,000 (i.e. 2,300*20).
8. On the other hand, the DRC Judge noted that the Respondent failed to present its response to the claim of the Claimant, in spite of having been invited to do so. By not presenting its position to the claim, the DRC Judge was of the opinion that the Respondent renounced its right of defense and, thus, accepted the allegations of the Claimant.

9. Furthermore, as a consequence of the aforementioned consideration, the DRC Judge concurred that in accordance with art. 9 par. 3 of the Procedural Rules, it shall take a decision upon the basis of the documentation already on file; in other words, upon the statements and documents presented by the Claimant.
10. In view of the above, the DRC Judge established that, at the date of termination of the contract, 4 April 2021, the Respondent owed the player's salaries since July 2019 until March 2021, i.e. 21 months.
11. In this respect, the DRC Judge referred to art. 14bis par. 1 of the Regulations, according to which *"1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s)."*
12. Thus, given the aforementioned circumstances and the provision quoted in the previous paragraph, the DRC Judge established that the player terminated the contract with just cause, and is therefore entitled to compensation.
13. However, before entering into the calculation of the payable compensation, the Judge established that the player is entitled to the payment of his remuneration until the date of termination of the contract.
14. In this respect, the DRC Judge recalled once again that, at the date of termination of the contract, 4 April 2021, the Respondent owed the player's salaries since July 2019 until March 2021, i.e. 21 months, corresponding to $\text{RON } 2,300 \times 21 = \text{RON } 48,300$.
15. Consequently, in strict application of the principle of *pacta sunt servanda*, the DRC Judge established that the Respondent has to pay to the Claimant, the total outstanding amount of RON 48,300, as detailed above.
16. Moreover, taking into account the request of the Claimant as well as the longstanding jurisprudence in this regard, the DRC Judge decided to award 5% interest p.a. over said amount as from the due dates.
17. In continuation, having established that the Respondent is to be held liable for the termination of the contract with just cause by the Claimant, the Judge decided that, in accordance with art. 17 par. 1 of the Regulations, the club is liable to pay compensation to the player.
18. In this respect, the Judge focused its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of the 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 player 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.
19. In application of the relevant provision, the Judge held that it first of all had to clarify as to whether the pertinent employment contract contains 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 Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
 20. As a consequence, the Judge determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The 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. Therefore, other objective criteria may be taken into account at the discretion of the deciding body.
 21. The members of the Judge then turned their attention to the remuneration and other benefits due to the player under the existing contract and/or the new contract, which criterion was considered by the Judge to be essential. The members of the Judge deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows the Judge to take into account both the existing contract and the new contract in the calculation of the amount of compensation.
 22. Bearing in mind the foregoing, the Judge proceeded with the calculation of the monies payable to the player under the terms of the employment contract as from its date of termination with just cause, i.e. April 2021 until 30 June 2021, and concluded that the Claimant would have received in total RON 6,900 [i.e. 2,300*3]. Consequently, the Judge concluded that the amount of RON 6,900 serves as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.
 23. In continuation, the 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.
 24. In this respect, the Judge verified that the player did not conclude any new contract until the original date of expiration of the contract, i.e. until 30 June 2021.
 25. In addition, the Judge referred to art. 17 par. 1 ii of the Regulations, according to which "subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation")"
 26. However, given that the player was unable to mitigate his damages, the DRC Judge established that the amount of payable compensation is limited to the residual value of the contract, i.e. RON 6,900.

27. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Judge decided to partially accept the player's claim and that the club must pay the amount of RON 6,900 as compensation for breach of contract in the case at hand.
28. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Judge in this regard, the Judge decided that the Respondent must pay to the Claimant interest of 5% p.a. on the aforementioned amount as of the date of the claim.
29. Equally, with regard to the Claimant's claim pertaining to flight tickets, the Judge noted that the contract does not mention a specific amount to be paid to the Claimant in this regard and that the Claimant did not provide any evidence of the amount spent by him on flight tickets and would have to be reimbursed by the club. Notwithstanding the foregoing, the DRC, codirecting the Chamber's established jurisprudence as well as the content of the contract, decided that the Respondent must pay to the Claimant for the route Romania-Japan (Tokyo), the amount of CHF 1,080, on the basis of the information provided by FIFA Travel.
30. Furthermore, taking into account the previous considerations, the DRC Judge referred to par. 1 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.
31. In this regard, the DRC Judge pointed out 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 and for the maximum duration of three entire and consecutive registration periods.
32. Therefore, bearing in mind the above, the DRC Judge decided that, in the event that the Respondent does not pay the amounts due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.
33. Finally, 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. 3 of the Regulations.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Ludovic Erhard, is partially accepted.
2. The Respondent, CS Pandurii Targu Jiu, has to pay to the Claimant, the following amount:
 - RON 48,300 (salaries from July 2019 until March 2021), plus 5% interest *p.a.* as from the due dates (i.e. 26th day of each month) until the date of effective payment;
 - RON 6,900, as compensation for breach of contract without just cause, plus 5% interest *p.a.* as from 16 April 2021.
 - CHF 1,080 as reimbursement for flight tickets.
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:



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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