

Decision of the DRC Judge

passed on 28 July 2021

regarding an employment-related dispute concerning the player Franco Valentin Flores

BY:

Johan van Gaalen (South Africa), DRC Judge

CLAIMANT:

Franco Valentin Flores, Argentina
Represented by Alberto Hernández

RESPONDENT:

Keshla PFC, Azerbaijan
Represented by Farid Hagverdiyev

I. FACTS OF THE CASE

1. On 1 June 2019, the Argentinian player, Franco Valentin Flores (hereinafter: *Claimant*), and the Azerbaijani club, Keshla PFC (hereinafter: *Respondent*) signed an employment contract valid as from the date of signature until 31 May 2020.
2. According to the contract, the Respondent undertook to pay the player a monthly salary of USD 6,394.
3. Furthermore, art. 9.3 of the contract reads as follows: *"If the Keshla FC will get 1 place at the Premier League, [the club] will pay [the player] 15,000 USD, if the club will winner of CUP 7,500 USD, Qualification to European competition 5,000 USD in manat at current rate of the Central Bank of Azerbaijan."*
4. On 14 December 2020, the player put the club in default for the payment of USD 5,000 related to the bonus for the qualification to European competitions, resulting from the contract and requested payment within 10 days.

II. PROCEEDINGS BEFORE FIFA

5. On 18 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

6. According to the Claimant, the club failed to remit the bonus related to the qualification for European competitions resulting from the contract, even though he put them in default.
7. In this regard, the player submitted documents indicating that the club finished the season in rank three and qualified to the Europa League 2020/2021.
8. The player argued that the club should face sanctions in accordance with art. 12bis RSTP.
9. The Claimant requested therefore payment of the following amounts:
 - EUR 5,000 as bonus resulting from art. 9.3 of the contract (qualification for European competition);
 - EUR 1,000 as reimbursement for legal fees.
 - *"Interest"* since the amount fell due (note: no specification).

b. Position of the Respondent

10. In its reply, the Respondent rejected the player's claim and argued having fulfilled all of its financial obligations.

11. The club acknowledged having qualified to a European competition in the relevant season.
12. In support of its allegations, the club submitted various receipts of payments relating to the period of September 2019 until February 2020 amounting to Azerbaijani New Manant (AZN) 9,200 (approx. USD 5,400) and held that it “overpaid” the player since such payments were not related to salaries.
13. On account of the above, the club held that such “overpayment” should be taken into account and that it therefore does not owe any amount to the player.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

14. First of all, the Dispute Resolution Chamber Judge (hereinafter also referred to *DRC Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 18 June 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.
15. Subsequently, the DRC judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in conjunction with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition February 2021), he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player and a club.
16. Subsequently, the DRC Judge 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 18 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

17. 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.

18. 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

19. The competence of the DRC Judge and the applicable regulations having been established, he 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 it considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

20. The foregoing having been established, the DRC Judge moved to the substance of the matter, and took note of the fact that the parties dispute which payments were in fact remitted to the player.
21. In this context, the DRC Judge acknowledged that it his task was to detail to which amounts the player is entitled to and if the club fulfilled its financial obligations as per contract, as alleged.
22. On account of the above, the DRC Judge noted that the player claims a payment relating to a bonus agreed upon in relation to the qualification to the European competitions. Furthermore, the DRC Judge noted that the Respondent acknowledged the fact that the player is entitled to receive such bonus of USD 5,000, but held having already fulfilled such financial obligation.
23. Subsequently, the DRC Judge examined the payment receipts submitted by the Respondent and noted that said payments do not refer to the bonus and were remitted long before such bonus was due. In this regard, the DRC Judge concluded such payments must have been related to other financial obligations due to the player and not to the claimed bonus.
24. Furthermore, the DRC Judge pointed out that the Respondent did not submit any proof that it remitted the bonus of USD 5,000 and therefore he decided to award the player USD 5,000, plus 5% interest as of 1 June 2020 (day after the contract expired).
- 25.

ii. Consequences

26. On account of the above, the DRC Judge pointed out that the Respondent did not submit any proof that it remitted the bonus of USD 5,000 and therefore he decided that the Respondent is liable to pay the player the amount claimed as bonus.
27. Consequently, the DRC Judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant outstanding bonus in the total amount of USD 5,000 plus 5% interest as of 1 June 2020, *i.e.* the day after the contract expired.

iii. Compliance with monetary decisions

28. Finally, taking into account the consideration under number 16. 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.

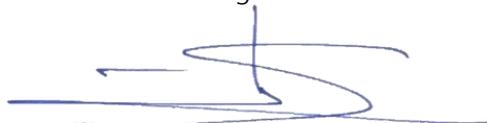
d. Costs

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 Chamber decided that no procedural costs were to be imposed on the parties.
34. 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.
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, Franco Valentin Flores, is partially accepted.
2. The Respondent, Keshla PFC, has to pay to the Claimant, the following amount:
 - USD 5,000 as outstanding remuneration plus 5% interest *p.a.* as from 1 June 2020 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 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](#).
7. 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).

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