

**Decision of the  
Dispute Resolution Chamber (DRC) judge**

passed on 14 July 2021

regarding an employment-related dispute concerning the player Youssef Fouzai

**BY:**

**Stijn Boeykens** (Belgium), DRC Judge

**CLAIMANT:**

**Youssef Fouzai, Tunisia**  
Represented by Mr Chagtmi Riadh

**RESPONDENT:**

**Al Fayha Club, Saudi Arabia**  
Represented by Mr Mohamed Rokbani

## I. FACTS OF THE CASE

1. On 21 September 2019, the Claimant and the Respondent concluded an employment agreement (hereinafter: *the contract*), valid between 1 October 2020 and 30 July 2021.
2. On 9 February 2020, the Claimant and the Respondent signed a termination agreement, based on which the contract would be terminated with immediate effect and based on which the Claimant was entitled to receive the total amount of USD 84,000 as follows:
  - USD 40,000 upon signing of the settlement agreement;
  - USD 22,000 on 31 March 2021;
  - USD 22,000 on 31 May 2021.
3. Art. 7.6 of the settlement agreement contains the following clause: *'The club is obliged to respect the payment deadlines of the amount agreed in article 4 paragraph 3, and in the event that one of the payments is delayed by more than 10 days than all the rest of the entire amount will be immediately due and payable, Alfayha FC will be obliged to pay the rest of the entire amounts and also a delay penalty of 20% of the rest amount not paid, will apply'*.
4. On 12 April 2021, the Claimant put the Respondent in default for the amount of USD 44,000, plus a 20% penalty of USD 8,800, providing the Respondent with a 10 days' deadline to remedy its default, however to no avail.

## II. PROCEEDINGS BEFORE FIFA

5. On 24 May 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. On 24 May 2021, the Claimant lodged a claim against the Respondent in front of FIFA, claiming the amount of USD 44,000 as outstanding amount per the settlement agreement and the amount of USD 8,800 as penalty under the settlement agreement, plus 5% interest *p.a.* as from the respective due dates.
7. In his claim, the Claimant explains that the Respondent failed to pay the second instalment, resulting in the remaining amount of USD 44,000 plus a penalty becoming due.

### b. Position of the Respondent

8. In its reply, the Respondent argued that due to the COVID-19 pandemic, it suffered from financial problems and that as a result of this force majeure situation (which is confirmed

by a decree issued on 6 April 2020 by the Minister of Human Resources and Social Development), it was not in a position to timely pay the agreed amounts.

9. In conclusion, the Respondent asks that FIFA reschedules the payments as follows:
- USD 22,000 on “31 December 2021”;
  - USD 22,000 on 30 January 2021.

### III. CONSIDERATIONS OF THE DRC JUDGE

#### a. Competence and applicable legal framework

10. First of all, the Dispute Resolution Chamber (DRC) judge (hereinafter also referred to as *DRC judge*) 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 24 May 2021 and submitted for decision on 14 July 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.
11. 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 and 2 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 (DRC) judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Tunisian player and a Saudi Arabian club.
12. 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 24 May 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

13. 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.
14. 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**

15. 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 it considered pertinent for the assessment of the matter at hand.

**i. Main legal discussion and considerations**

16. 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 amounts agreed in the settlement agreement should be paid in the original agreed dates, and whether a penalty in the amount of 20% of the outstanding amount is due.
17. In this context, the Chamber acknowledged that it its task was to determine whether the Respondent had submitted valid arguments, which would lead to the conclusion that the originally agreed dates are not reasonable, as well as whether or not the agreed penalty in clause 7.6 of the settlement agreement is considered valid and applicable in the matter at hand.
18. First of all, the DRC judge addressed the argumentation of the Respondent, that in view of the outbreak of the COVID-19 pandemic, it deems that it is entitled to a rescheduling of the payment plan as per the settlement agreement.
19. In this respect, the DRC judge was of the opinion that the above argumentation of the Respondent cannot be upheld, as the COVID-19 outbreak is not considered by FIFA a force majeure situation in any specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure. It follows from these reasons that in principle, a party to a contract has in principle the obligation to comply with its financial obligations as per an agreement.
20. In absence of a direct causal relation between the alleged financial impact of the outbreak of the COVID-19 pandemic on the Respondent, as well as the absence of any further documentation, the DRC judge decided that the two instalments of EUR 22,000 each are due on their initial due dates of 31 March and 31 May 2021.
21. What is more, in relation to the claimed penalty of 20% in case of late payment of any of the instalments agreed as per the settlement agreement, the DRC judge concluded that penalty clauses may be freely entered into by the contractual parties and may be considered acceptable, in the event that the pertinent written clause meets certain criteria such as

proportionality and reasonableness. In this respect, the DRC judge highlighted that in order to determine as to whether a penalty clause is to be considered acceptable, the specific circumstances of the relevant case brought before it shall also be taken into consideration.

22. In the specific case at hand, the DRC judge deemed that the penalty fee of 20% of the total outstanding amount of USD 44,000, i.e. USD 8,800, which the parties contractually agreed upon in the context of terminating the employment relation, is both proportionate and reasonable in the case at hand.

## ii. Consequences

23. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
24. 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 the two instalments in the amount of USD 22,000 each, as agreed upon in the settlement agreement.
25. Moreover, in line with the well-established jurisprudence of the Chamber as well as the request of the Claimant, the DRC judge decided to award 5% interest *p.a.* on the aforementioned amounts as from their respective due dates.
26. Furthermore, the DRC judge concluded that Respondent is also liable to pay to the Claimant a penalty in the amount of USD 8,800.
27. In addition, the DRC judge decided – in line with the Chamber’s well-established jurisprudence - to reject the Claimant’s request for interest to be awarded on said penalty, as this would be considered a double penalty.

## iii. Compliance with monetary decisions

28. Finally, taking into account the consideration under numbers 24. and 26. 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.

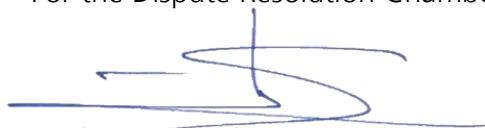
**d. Costs**

33. The 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.
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 concluded its deliberations by rejecting any other requests for relief made by any of the parties.

#### IV. DECISION OF THE DISPUTE RESOLUTION CHAMBER (DRC) JUDGE

1. The claim of the Claimant, Youssef Fouzai, is accepted.
2. The Respondent, Al Fayha Club, has to pay to the Claimant, the following amount:
  - USD 44,000 as outstanding remuneration, plus 5% interest *p.a.* until the effective date of payment as follows:
    - on the amount of USD 22,000 as from 1 April 2021;
    - on the amount of USD 22,000 as from 1 May 2021.
  - USD 8,800 as penalty.
3. Full payment (including all applicable interest) shall be made to the bank account set out in the enclosed Bank Account Registration Form.
4. 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.
5. 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](#).
6. This decision is rendered without costs.

For the Dispute Resolution Chamber:



**Emilio Garcia Silvero**

Chief Legal & Compliance Officer

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**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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