

Decision of the Dispute Resolution Chamber (DRC) judge

passed on 28 July 2021

regarding an employment-related dispute concerning the player **Muhsini Malima Makame**

BY:

Johan van Gaalen (South Africa), DRC Judge

CLAIMANT:

Muhsini Malima Makame, Tanzania

Represented by Felix Ngamanya Sapao

RESPONDENT:

FC Crvena Zvezda Beograd, Serbia

Represented by Davor Radic

I. FACTS OF THE CASE

1. On 21 January 2020, the Claimant and the Respondent signed an employment contract, valid between 21 January 2020 and 30 June 2022, based on which the Claimant would be entitled to receive a monthly salary of Serbian Dinar (RSD) 31,747.36.
2. On 17 August 2020, the Claimant and the Respondent concluded a termination agreement, based on which they agreed to terminate the contract on 12 August 2020 and based on which an amount of EUR 12,750 would be payable to the Claimant by the Respondent, no later than 15 October 2020.
3. Art. 5 of the termination agreement provides for the following clause: *'In the event of a dispute, the parties shall attempt to resolve it by mutual agreement, otherwise the Arbitral Tribunal of the Football Association of Serbia or FIFA shall be competent to deal with the matter at hand'*.
4. On 22 April 2021, the Claimant put the Respondent in default for the amount of EUR 12,750, providing it a 7 days' deadline to remedy its default however to no avail.

II. PROCEEDINGS BEFORE FIFA

5. On 2 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. According to the Claimant, the Respondent failed to make the payment of the amount of EUR 12,750.
7. The requests for relief of the Claimant, as amended, were the following:
 - to be awarded the amount of EUR 12,750, plus 5% interest p.a. as from the date of termination of the contract.

b. Position of the Respondent

8. In its reply, the Respondent contested FIFA's competence to deal with the matter at hand, since based on art. 5 of the termination agreement, the Arbitral Tribunal of the Football Association of Serbia is competent to deal with the matter at hand.
9. Moreover, the Respondent argued that on 23 March 2021, it paid an amount of EUR 5,000 to the Claimant.

c. Additional position of the Claimant

10. After having been asked to comment on the Respondent's statement that it already paid an amount of EUR 5,000, the Claimant stated that he could not get in contact with bank to confirm whether or not the amount of EUR 5,000 had been received

III. CONSIDERATIONS OF THE DRC JUDGE

a. Competence and applicable legal framework

11. First of all, the Dispute Resolution Chamber (DRC) judge (hereinafter also referred to as *DRC judge*) analysed whether he was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 2 May 2021 and submitted for decision on 28 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.
12. Subsequently, the DRC judge referred to art. 3 par. 1 of the Procedural Rules and observed that in accordance with art. 24 par. 1 and par. 2 in combination with art. 22 lit. a) and b) of the Regulations on the Status and Transfer of Players (edition February 2021), the DRC judge is in principle competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Tanzanian player and a Serbian club.
13. However, the DRC Judge acknowledged that the Respondent contested the competence of FIFA's deciding bodies on the basis of clause 5 of the employment contract and alleging that the arbitration tribunal of the Football Association of Serbia should be competent to deal with the matter at hand.
14. In this respect, the DRC judge emphasised that in accordance with art. 22 lit. b) of the Regulations on the Status and Transfer of Players it is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the Association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the DRC referred to FIFA Circular no. 1010 dated 20 December 2005. In this regard, the DRC judge further referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.
15. Furthermore, the DRC judge observed that clause 5 of the employment contract does not refer to one specific national dispute resolution chamber or any similar arbitration body in the sense of art. 22 lit. b) of the aforementioned Regulations, but also contains a reference to FIFA. Therefore, DRC judge deemed that said clause could not serve as the basis on which

the Arbitral Tribunal of the Football Association of Serbia should be declared the arbitration tribunal competent to decide on the present dispute, since the relevant clause is not be considered exclusive.

16. As a result, and taking into consideration all of the above circumstances, the DRC judge concluded that the Respondent's objection to the competence of FIFA to hear the present dispute has to be rejected, and that the DRC judge is therefore competent, on the basis of art. 22 b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.
17. Having established the foregoing, 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 2 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

18. 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.
19. 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

20. 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

21. The foregoing having been established, the DRC judge moved to the substance of the matter, and took note of the fact that the parties strongly dispute whether an amount of EUR 12,750 had remained outstanding.

22. In this context, the DRC judge acknowledged that it his task was to determine whether on the basis of the documentation on file it could be established that certain amount and/or the entire amount of EUR 12,750 would have been paid by the Respondent to the Claimant.
23. In this respect, the DRC judge noted that the Respondent alleged that an amount of EUR 5,000 was paid, and submitted an untranslated bank receipt, allegedly confirming said payment.
24. At this point, the DRC judge reminded the parties that, in accordance with art. 9 par. 1 lit. e) of the Procedural Rules, all documentation provided in the context of a dispute in front of FIFA should be presented in the original version and, if applicable, translated into one of the official FIFA languages (English, French, Spanish and German). Consequently, documents presented in any other language cannot be taken into account.
25. What is more, the DRC judge noted that the Claimant denied having received an amount of EUR 5,000.
26. In view of the foregoing, the DRC judge decided to not upheld the arguments of the Respondent and established that an amount of EUR 12,750 had remained outstanding.

ii. Consequences

27. Having stated the above, the DRC judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
28. In view of all the above and, in particular, taking into account that the Respondent did not submit any evidence on the basis of which it could be concluded that (a part of) the amount of EUR 12,750 had been paid, the DRC judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent must fulfil its contractual obligations towards the Claimant and is to be held liable to pay the Claimant the amount of EUR 12,750.
29. In continuation and with regard to the Claimant's request for interest, the DRC judge decided that the Claimant is entitled to receive interest at the rate of 5% p.a. on the amount of EUR 12,750 as from 17 August 2020 until the date of effective payment.

iii. Compliance with monetary decisions

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

31. 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.
32. 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.
33. 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.
34. 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

35. 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 DRC judge decided that no procedural costs were to be imposed on the parties.
36. Likewise and for the sake of completeness, the DRC judge recalled the contents of art. 18 par. 4 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
37. 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, Muhsini Malima Makame, is admissible.
2. The claim of the Claimant is accepted.
3. The Respondent, FC Crvena Zvezda Beograd, has to pay to the Claimant, the following amount:
 - EUR 12,750 as outstanding remuneration, plus 5% interest *p.a.* as from 17 August 2020 until the date of effective payment.
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 (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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