FIFA

Decision of the
Dispute Resolution Chamber judge

passed on 28 July 2021

regarding an employment-related dispute concerning the player Muris Mesanovic

BY:

Johan van Gaalen (South Africa), DRC Judge

CLAIMANT:

Muris Mesanovic, Bosnia and Herzegovina
Represented by Mr Emir Spaho

RESPONDENT:

Kayserispor, Turkey

I. FACTS OF THE CASE

1. On 8 January 2020, the Czech club, FK Mlada Boleslav (hereinafter: *the parent club*) transferred –on loan– the player, Mr Muris Mesanovic (hereinafter: *the Claimant* or *the player*) to the Turkish club, Kayserispor (hereinafter: *the club* or *the Respondent*).

2. Subsequently, on 10 January 2020, the Claimant and the Respondent concluded an employment contract (hereinafter: *the contract*), valid as from 10 January 2020 until the end of the 2019/2020 season in Turkey (the initial calendar foresaw that the said season would end on 31 May 2020, but it was extended until 26 July 2020 due to Covid-19).

3. Clause 6.1 para 1 of the contract reads as follows: "*For the second half of 2019/2020 Football Season: 125.000,00-Euro (One Hundred Twenty-Five Thousand Euros)* [...] *is to be paid to the Player by the Club as monthly salary in 5 (five) equal instalments between the period January 2020- May 2020. The monthly salaries are to be paid the last day of the relevant months*"

4. On 31 May 2020, the parent club, the Claimant and the Respondent concluded a Protocol that amended the loan transfer agreement (hereinafter: *the Protocol).* The Protocol provided that the term of the loan would be extended from 31 May 2020 to 31 July 2020.

5. By means of his letter dated 8 January 2021, the Claimant put the Respondent in default of payment in the amount of EUR 60,000, thereby granting the Respondent a 10 days´ deadline to remedy the default; however, to no avail.

II. PROCEEDINGS BEFORE FIFA

a. The claim of the Claimant

6. On 12 February 2021, the Claimant lodged a claim against the Respondent before FIFA, requesting to be awarded EUR 60,000, plus 5% interest *p.a.,* broken down by the Claimant as follows:

   – EUR 10,000 corresponding to the unpaid part of the salary of May 2020;
   – EUR 25,000 corresponding to the salary of June 2020;
   – EUR 25,000 corresponding to the salary of July 2020.

7. In his claim, the player explained that, upon the extension of the loan agreement concluded between the parent club and the parties involved in the dispute, the contract between the Claimant and the Respondent was "*extended until 31.07.2020, with the rights and obligations of the contracting parties in accordance with the concluded contract of 10.01.2020*". In this regard, the Claimant argued that "*the Respondent was obliged to pay the Claimant's salary for the months of June and July in the amount of EUR 25,000 each, which is in accordance with the concluded contract*".

b. Position of the Respondent

8. In its reply to the claim, the Respondent maintained different arguments:

   - That the total fixed remuneration of the player was EUR 125,000, which was paid in 5 different instalments of EUR 25,000, which is what clause 6.1 of the contract stated, *i.e.* the player was not entitled to monthly salaries of EUR 25,000, but rather to a lump sum of EUR 125,000 that was payablein different instalments;

   - That the contract was the "*final and binding*" agreement that regulated the employment relationship between the parties, not being acceptable that the player challenges its terms, which were not subject of modification;

   - That the FIFA Guidelines on Covid-19 do not automatically extend employment relationships or loan agreements, hence, the player has no legal ground;

   - That the "legal relation" between the parent club and the Respondent is a separate relationship that does not affect the contents of the contract;

   - That the player sent his default notice to an email address that is not included in clause 7/B of the contract.

9. On the other hand, the Respondent acknowledged being in default of payment concerning the amount of EUR 10,000, that was not paid to the player in May 2020.

10. In its request for relief, the Respondent requested the claim of the Claimant regarding the amount of EUR 50,000 (salaries of June and July 2020) to be rejected and the latter be ordered to "*cover legal costs and procedural fees arisen*".

III. CONSIDERATIONS OF THE DRC JUDGE

a. Competence and applicable legal framework

11. First of all, the Dispute Resolution Chamber judge (hereinafter also referred to as *DRC judge)* analysed whether it was competent to deal with the case at hand. In this respect, the DRC judge took note that the present matter was presented to FIFA on 12 February 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.

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 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 competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Bosnian player and a Turkish club.

13. Subsequently, the DRC judge analysed which regulations should be applicable as to the substance of the 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 Player (edition February 2021), and considering that the present claim was lodged on 12 February 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

14. 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 it may consider evidence not filed by the parties.

15. 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

16. 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

17. The foregoing having been established, the DRC judge moved to the substance of the matter.

18. In the first place, the DRC judged recalled that the Claimant requested to be awarded outstanding remuneration; in particular, the amount of EUR 10,000 that remained unpaid from the salary of May 2020, as well as the amount of EUR 50,000, requested by the Claimant as the salaries due to him for the months of June and July 2020, plus interests.

19. In particular, recalled the DRC judge, the Claimant explained that, due to Covid-19, the 2019/2020 season in Turkey was extended from the 31st of May 2020 until the end of July 2020, reason why the parent club, the Claimant and the Respondent concluded a Protocol that contemplated the extension of the loan, which was thereupon valid until 31 July 2020.

20. In this context, the DRC judge referred to the argumentation of the Claimant, who held that he rendered his services for the club until the end of July 2020 and that, nevertheless, the Respondent did not pay him any salary during the months of June and July 2020. What is more, observed the DRC judge, the Claimant stressed that the Respondent failed to pay him the full salary of May 2020, remaining the amount of EUR 10,000 unpaid to date. As per the Claimant, the financial obligations of the Respondent were automatically extended until 31 July 2020, meaning that for those months the player was also entitled to a monthly salary of EUR 25,000.

21. The DRC judge noted that, on its part, the Respondent held that the remuneration of the player was fixed in the contract and that the latter was only entitled to receive the amount of EUR 125,000 in total, amount that was to be paid in different instalments, which is different from the allegations of the player, who claims that he was entitled to a monthly salary of EUR 25,000.

22. Moreover, the DRC judge noted that the Respondent alleged that the Covid-19 Guidelines cannot be applied in order to automatically extend employment relationships and that the "*legal relationship*" between the parent club and the Respondent does not affect the employment situation of the player, meaning that the novation of the loan agreement by the conclusion of the Protocol does not mean that the player is entitled to further amounts than the ones provided in his employment contract. What is more, recalled the DRC judge, the Respondent also challenged having received the default notice of the player and claimed that he sent it to an e-mail address not contemplated in the contract.

23. The above having been explained, the DRC judge observed that the main point of the present disputes is the following: Was the employment contract automatically extended until 31 July 2021? If so, does the extension of the contract entail a modification of the financial conditions of the contract?

24. As to the first of the above-mentioned questions, the DRC judge observed that the parent club, the player and the club concluded a Protocol on 31 May 2020, which clause 1 stipulates that the loan agreement is extended until 31 May 2020. In this context, continued the DRC judge, given that the employment relationship existing between the player and the Respondent derives and exists under the framework of the loan agreement, it is to be presumed that the contract was extended until 31 May 2020.

25. The above being said, highlighted the DRC judge, the argument of the Respondent regarding the "*final and binding*" nature of the contract cannot be upheld, insofar it is not possible to amend the term of a loan agreement without modifying the duration of the corresponding employment contract. Moreover, the DRC judge referred to the argument

of the Respondent that the "*legal relation*" between the parent club and the Respondent is a separate relationship from the one existing between the now Claimant and Respondent, argument that the DRC judge deemed that cannot be upheld either, insofar both contractual relationships are dependent from one another; proof of which is that the player –as art. 10.1 of the RSTP requires– was a part of both, the loan agreement and the Protocol.

26. The first of the above-mentioned questions having been answered, the DRC judge referred to the second of the questions made. In this context, explained the DRC judge, it is a matter of fact that despite the FIFA Covid-19 Guidelines, the parties failed to conclude a novation to the contract in order to regulate the financial obligations arisen upon the extension of the loan, which would have cleared the financial situation.

27. However, pointed out the DRC judge, the lack of agreement in this regard does not necessarily mean that the extension of the contract did not trigger any financial consequence for the parties. As to the argument of the Respondent that the player was not entitled to a salary of EUR 25,000 but to a lump sum of EUR 125,000 that was payable in 5 instalments, the DRC judge referred to clause 6.1 para 1 of the contract, which suggests the contrary, since it stipulates that each of the instalments of EUR 25,000 has the consideration of monthly salary.

28. What is more, continued the DRC judge, it remained uncontested that the player rendered his services for the club until the end of July 2020, *i.e.* the player rendered his services for 2 months extra, which was not contemplated by the contract. Moreover, wished to emphasize the DRC judge, should the parties not have extended the contract, the player would have been reinstated in the team of the parent club upon expiry of the contract with the Respondent on 31 May 2020 (his contract with the parent club was valid until 30 June 2022 in accordance with the documentation displayed in TMS).

29. Thus, stressed the DRC judge, it does not seem reasonable to determine that the player was not entitled to a salary during the months of June and July 2020, since he would have been entitled to a salary during the said months should the parties not have extended the term of the loan. Hence, in spite of the absence of a specific agreement regulating the financial conditions of the employment relationship for the said months, the DRC judge decided that the player is entitled to a monthly salary for the said months, which shall be paid by the Respondent, which is the party that benefitted from the services of the player; amount that seems reasonable and proportionate, since EUR 25,000 was the amount that the Respondent was paying to the player as fixed salary during the previous months.

30. Concerning the argument of the Respondent that the default notice was sent by the Claimant to a non-recognized email address, continued the DRC judge, it must firstly be pointed that art. 7B of the contract only contains the e-mail address of the Claimant for notification purposes, but not the one of the Respondent. Hence, explained the DRC judge, the argument of the Respondent cannot be upheld. However, pointed out the DRC judge,the effective delivery of the said notice is not of relevance, since –apart from the good faith that is shown when a party puts the other in default before lodging a claim– the said

default notice does not affect either the degree of acceptance of the present claim nor the material consequences, considering that art. 12bis RSTP is not applicable to the matter at hand, in view of the fact that the contractual obligation on the Respondent is not triggered prima facie, but rather required a factual and legal analysis of the circumstances surrounding the present dispute.

ii. Consequences

31. Having stated the above, the DRC judge turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.

32. In view of the positions of the parties, their respective requests for relief and the above-mentioned considerations, the DRC judge decided that the Claimant is entitled to receive from the Respondent outstanding remuneration in the amount of EUR 60,000, corresponding to the amount of EUR 10,000, due as unpaid part of the salary of May 2020, as well as the salaries of June and July 2020 in the amount of EUR 25,000 each.

33. The above being said, the DRC judge referred to the *petitum* of the Claimant, as well as to the longstanding jurisprudence of the DRC judge and decided that the Claimant is entitled to a default interest of 5% interest *p.a.* on the amount of EUR 60,000 as from the respective due dates until the date of effective payment.

iii. Compliance with monetary decisions

34. Finally, taking into account the consideration under number 13. 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.

35. 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.

36. 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.

37. 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.

38. 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

39. 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.

40. 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.

41. 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, Muris Mesanovic, is accepted.

2. The Respondent, Kayserispor, has to pay to the Claimant outstanding remuneration in the amount of EUR 60,000, plus 5% interest p.a., as follows:

   - on the amount of EUR 10,000, as from 1 June 2020 until the date of effective payment;
   - on the amount of EUR 25,000, as from 1 July 2020 until the date of effective payment;
   - on the amount of EUR 25,000, as from 1 August 2020 until the date of effective payment.

3. Full payment (including all applicable interest) shall be made to the bank account set out in the enclosed Bank Account Registration Form.

4.

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:

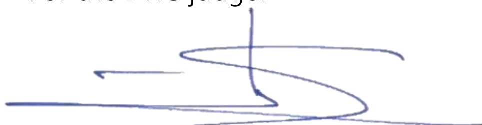
1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of three entire and consecutive registration periods.

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 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).

CONTACT INFORMATION:

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777