

Decision of the Dispute Resolution Chamber (DRC) Judge

passed on 14 July 2021

regarding an employment-related dispute concerning the player Armando Sadiku

BY:

Stijn Boeykens (Belgium), DRC Judge

CLAIMANT:

Armando Sadiku, Albania
Represented by Mr. Sami Dinc

RESPONDENT:

BB Erzurumspor Kubülü Derneği, Turkey

I. FACTS OF THE CASE

1. On 22 January 2021, the Albanian player, Mr. Armando Sadiku (hereinafter: *the player* or *the Claimant*), and the Turkish club, BB Erzurumspor Kubülü Derneği (hereinafter: *the club* or *the Respondent*), signed a termination agreement related to the previous employment relationship maintained between them (hereinafter: *the termination agreement*).
2. In accordance with clause 3 of the termination agreement, the club undertook to pay the player the following amounts:
 - a. EUR 60,000 net by 10 February 2021;
 - b. EUR 70,000 net by 30 March 2021;
 - c. EUR 60,000 net by 30 May 2021; and
 - d. EUR 50,000 net by 30 July 2021.
3. Additionally, clause 4 of the termination agreement stipulated the following: "*[The club] herewith agrees and undertakes that should [the club] fail to pay any of the aforementioned instalments specified under article 3 / point a-b-c-d on their due dates including the 5 days grace period, an interest in favour to the Player on the amount of 20% (twenty per cent) from the instalment total amount shall start to accrue without need of any further notification / notice and / counter verdict. [The club] irrevocably agrees that this interest is not extortionate, is set by the free will of the Parties and with the signing of this agreement, [the club] waives from the demand rights of reduction and amortization of the penalty. The Parties agree that this provision is the indispensable provision (sine qua non) of this Agreement and this Agreement has been signed taking into consideration of this provision*".
4. On 26 April 2021, the player put the club in default and granted it with a 10 days' deadline in order to proceed the payment of EUR 70,000 net, corresponding to the second instalment of the termination agreement.
5. On 5 May 2021, the club sent the player an e-mail referring to a phone call apparently made between the parties and formalising its request to postpone the payment of the second instalment due to economic difficulties.
6. On 25 May 2021, the player lodged the claim at hand against the club, requesting payment of EUR 70,000 net, plus 20% interest *p.a.* as from 5 April 2021 until the date of effective payment.
7. On 28 June 2021, the club presented its position to the player's claim. In this context, the club, *inter alia*, recalled the Swiss law in order to state that the interest at a rate of 20% is "*excessive and disproportionate*". In support of its allegations, the club also referred to the

jurisprudence of the Court of Arbitration for Sport (CAS) and from the Swiss Federal Tribunal (SFT) on the matter.

8. In doing so, the club claimed that the *"contractual penalty accrued for the late payment concerned should be left with no binding effect upon [the club] resulting from the disproportionate and excessive nature of the interest amounts concerned or alternatively should be decreased at the discretion of the Honorary Chamber"*.

II. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER JUDGE

a. Competence and applicable legal framework

9. First of all, the Dispute Resolution Chamber Judge (hereinafter also referred to as *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 25 May 2021 and submitted for decision on 14 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.
10. The DRC Judge then 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. 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 an Albanian player and a Turkish club.
11. Subsequently, the DRC Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he 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 25 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

12. 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.
13. 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

14. His competence 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 he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

15. The DRC Judge then moved to the substance of the matter, and took note of the fact that the club acknowledged its debt towards the player and, *inter alia*, referred to the COVID-19 pandemic in order to justify the lack of payment.
16. Having said this, the DRC Judge highlighted that FIFA issued a set of guidelines, the COVID-19 Guidelines, which aim at providing appropriate guidance and recommendations to member associations and their stakeholders, to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest. Moreover, on 11 June 2020, FIFA has issued an additional document, referred to as FIFA COVID-19 FAQ, which provides clarifications on the most relevant questions in connection with the regulatory consequences of the COVID-19 outbreak and identifies solutions for new regulatory matters.
17. In this context, the DRC Judge noted that the club did not file together with its reply any documentation pertaining to the question of the COVID-19 pandemic. Consequently, the DRC Judge underlined that the club failed to meet its burden of proof in accordance with the aforementioned art. 12 par. 3 of the Procedural Rules insofar as the FIFA COVID FAQ, in its question no. 1, establishes that the Bureau of the FIFA Council did not determine that the COVID-19 outbreak was 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*; rather, it provides that whether or not a *force majeure* situation (or its equivalent) exists in the country or territory is a matter of law and fact, which must be addressed on a case-by-case basis *vis-à-vis* the relevant laws that are applicable to any specific employment or transfer agreement.
18. On account of the aforementioned considerations, the DRC Judge made reference to the general legal principle of *pacta sunt servanda*, and decided that the club shall be liable to pay the player the outstanding remuneration sought, corresponding to the second instalment of the termination agreement and amounting to EUR 70,000 net.

19. In continuation, the DRC Judge turned his attention to the content of clause 4 of the termination agreement.
20. After carefully analysing the wording of such clause, the DRC Judge acknowledged that the parties agreed upon an interest rate of 20% *per annum* in case of default from the club.
21. In doing so, the DRC Judge recalled FIFA's long-standing jurisprudence and concluded that such parameter is excessive. As such, the DRC Judge determined that the relevant interest rate had to be reduced to 18% *per annum*, which was deemed reasonable and proportionate in line with the common approach of the Dispute Resolution Chamber.
22. At the end, the DRC Judge took due consideration of the player's requests for relief and determined that said interest shall arise as from 5 April 2021 until the date of effective payment.

ii. Art. 12bis of the Regulations

23. Having established the above, the DRC Judge referred to art. 12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
24. To this end, the DRC Judge confirmed that the player put the club in default of payment of the amounts sought, which had fallen due for more than 30 days, and granted the club with 10 days to cure such breach of contract.
25. Accordingly, the DRC Judge confirmed that the club had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
26. The DRC Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the club. On account of the above and bearing in mind that this is the first offense by the club within the last two years, the DRC Judge decided to impose a warning on the club in accordance with art. 12bis par. 4 lit. a) of the Regulations.
27. In this connection, the DRC Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

iii. Compliance with monetary decisions

28. Finally, 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.

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 and for the maximum duration of three entire and consecutive registration periods.
30. Therefore, bearing in mind the above, the DRC Judge decided that, in the event that the club does not pay the amounts due to the player within 45 days as from the moment in which the player communicates the relevant bank details to the club, provided that the decision is final and binding, 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 club in accordance with art. 24bis par. 2 and 4 of the Regulations.
31. The DRC Judge recalled that the above-mentioned bans 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.

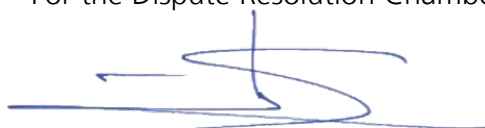
d. Costs

32. 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.
33. 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.
34. Lastly, the DRC Judge concluded its deliberations by rejecting any other requests for relief made by any of the parties.

III. DECISION OF THE DISPUTE RESOLUTION CHAMBER JUDGE

1. The claim of the Claimant, Armando Sadiku, is partially accepted.
2. The Respondent, BB Erzurumspor Kubülü Derneği, has to pay to the Claimant, the following amount:
 - EUR 70,000 net as outstanding remuneration plus 18% interest *p.a.* as from 5 April 2021 until the date of effective payment.
3. A warning is imposed on the Respondent.
4. Any further claims of the Claimant are rejected.
5. Full payment (including all applicable interest) shall be made to the bank account set out in the enclosed Bank Account Registration Form.
6. 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.
7. 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](#).
8. This decision is rendered without costs.

For the Dispute Resolution Chamber Judge:



Emilio Garcia 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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