Decision of the
Dispute Resolution Chamber

passed on 29 July 2021

regarding an employment-related dispute concerning the player Francisco Santos da Silva Junior

COMPOSITION:

Clifford J. Hendel (USA & France), Deputy Chairman
Angela Collins (Australia), member
Stefano La Porta (Italy), member

CLAIMANT:

Francisco Santos da Silva Junior, Guinea-Bissau
Represented by Mr Pedro Macieirinha

RESPONDENT:

Hapoel Haifa FC, Israel

I. FACTS OF THE CASE

1. On 6 August 2019, the Guinean player, Francisco Santos da Silva Junior (hereinafter: *the player* or *the Claimant*) and the Israeli club, Hapoel Haifa FC (hereinafter: the club or *the Respondent*) concluded an employment contract (hereinafter: *the contract*), valid as from the date of its signature until 31 May 2020.

2. In accordance with clause 6 A.) of the contract, the club undertook to pay the player a monthly salary of NIS 65,878 gross.

3. Moreover, clause 6 G.) of the contract provides that, should the club be within the 6 first positions of the league at the end of the 2019/2020 season, the player would be entitled to a bonus of NIS 30,284 gross.

4. Clause 7 of the contract reads as follows: "*Arbitration a. The parties hereby agree the differences of opinion between the Club and Player or between the Player and the Club in everything relating to the provisions of this Agreement, shall be decided by an arbitrator, who will be appointed by virtue of the power of the Association´s Arbitration Institute Codex. b. The arbitration will be held in accordance with the directives of the Association´s Arbitration Institute Codex*".

5. Clauses 1 (b), 2 (b), 5 (a) and 8 (h) of the of the Regulations of the Israeli NDRC read as follows: "*Clause 1 (b): The arbitrators and mediators will be appointed by an appointments committee comprised of the president of the Supreme Tribunal, a member of the presidium of the Supreme Tribunal, a representative of the players' union, the general manager of the Association, a representative of the League Administration and the chairman of the Institute of Arbitration and Mediation, as defined in the statutes of the Football Association ("the Statutes"). The chairman of the Institute of Arbitration and Mediation will also be appointed by the Appointments Committee but will not take part in this election; Clause 2 (b): Arbitrators who are members of the Institute of Arbitration and Mediations shall have exclusive jurisdiction to try any dispute relating to the contractual relationship between a club and a player and between a player and a club; Clause 5 (a): Any dispute brought for decision of the Institute of Arbitration and Mediation shall be adjudicated before a single arbitrator. The identity of the arbitrator shall be determined by agreement of all the parties to the arbitration from the List of Arbitrators (…). If all the parties to the arbitration have failed to deliver written notice to the Secretariat of their consent in regard to the identity of the arbitrator as aforesaid, the president of the Supreme Tribunal shall appoint an arbitrator from the List of Arbitrators who shall adjudicate on the Arbitration File. In a case in which there has been consent of all the parties to the arbitration regarding the identity of the arbitrator who will adjudicate the Arbitration File, the president of the Supreme Tribunal shall appoint such arbitrator to serve as arbitrator in the aforesaid file. Clause 8 (h) [sic]: Apart from an appeal against the sanction that may be imposed on a club (…), there shall be no appeal against an arbitrator's award before the Supreme Tribunal of the Association.*"

6. By means of his letter dated 9 April 2021, the player put the club in default of payment in the total amount of NIS 194,979, corresponding to outstanding salaries and bonuses due to him as from January until May 2020, thereby granting the club a 10 days´ deadline to remedy the default; however to no avail.

II. PROCEEDINGS BEFORE FIFA

7. On 23 April 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

8. In his claim against the club before FIFA, the player requested to be awarded outstanding remuneration in the total amount of NIS 194,979, plus 5% interest p.a. as from the respective due dates until the date of effective payment, broken down by the Claimant as follows:

- NIS 32,939 corresponding to 50% of the salary of January 2020, that remained unpaid;
- NIS 32,939 corresponding to 50% of the salary of February 2020, that remained unpaid;
- NIS 32,939 corresponding to 50% of the salary of March 2020, that remained unpaid;
- NIS 32,939 corresponding to 50% of the salary of April 2020, that remained unpaid;
- NIS 32,939 corresponding to 50% of the salary of May 2020, that remained unpaid;
- NIS 30,284 corresponding to the bonus due ex. clause 6 G.) of the contract. 8.

9. In this context, the Claimant argued that, despite having complied with his contractual obligations towards the club, the latter failed to comply with its financial obligations towards him, failing to pay his full salaries as from January until May 2020 (expiry of the contract), as well as the classification bonus contained in the aforementioned clause 6 G.) of the contract; despite even having put the club in default of payment. In this context, the Claimant wished to stress that "*the Claimant has gone through financial difficulties. All because the Respondent Club does not pay the salaries and other amounts due to the Claimant Player*".

b. Position of the Respondent

10. In its reply to the claim, as to the competence, the Respondent held that "*The Israeli Association Arbitral Institution qualifies by all means as an independent chamber qualifying*

by every standard of the FIFA National Dispute Resolution Chamber Standard Regulations (NDRC)".

11. In this respect, the Respondent provided a copy of the Regulations of the Israeli NDRC, along with its translation into English; in particular, a document titled "*CONSTITUTION The Institute of Arbitration and Mediation*" and argued that, in view of the content of the said Regulations, FIFA is not competent to decide upon the present dispute, insofar the Israel NDRC is the only competent body to adjudicate on the present matter.

12. Thus, the Respondent requested the claim of the Claimant be considered inadmissible.

13. In its reply to the claim, as to the substance, the Respondent maintained that: "*According to Article 6(a) of the Agreement (exhibit 1 above), the Claimant was entitled to 10 monthly salaries in the gross amount of NIS 65,878 each, which is equivalent to NIS 49,000 net each – Based on equivalence to USD 14,000 net per each month (1 USD equals to 3.5 NIS)*". As proof of the aforementioned, the Respondent provided an official offer document (hereinafter: *the offer*) concluded with the Claimant, whereby the club undertook to pay to the player a monthly salary of USD 14,000 net for the 2019/2020 season. In this respect, the club argued that USD 14,000 net equals NIS 49,000, which demonstrates that the net salary of the player was NIS 49,000 (in accordance with the conversion made by the FIFA administration, USD 14,000 was equivalent to NIS 48,785 on the date on which the contract was signed, *i.e.* 6 August 2019).

14. As to the bonus of NIS 30,284 gross contained in clause 6 G.) of the contract, the club argued that "*The official offer proves that this bonus is equivalent to total of USD 6,000 or NIS 21,000 net*" (in accordance with the conversion made by the FIFA administration, USD 6,000 was equivalent to NIS 20,908 on the date on which the contract was signed, *i.e.* 6 August 2019).

15. Concerning the salaries of January and February 2020, the Respondent held that it paid them in full. In this respect, the Respondent alleged that "*In the month of January 2020, an amount of NIS 601 was deducted from the Claimant's net salary due to toll road fees that the player had failed to pay. To be clear, the Respondent provided the Claimant with a car to his disposal during the time the employment contract, but the Claimant had to pay for speed tickets, toll road fees, etc*". In addition, the Respondent alleged that the Claimant "*left Israel on June 18th and used the car for additional 18 days beyond the time that was agreed in the contract*".

16. In addition, the Respondent argued that "[…] *the small difference between the gross amount received and the gross amount in the agreement is due to accounting tax issues, but as we can see, both salaries of January and February 2020 were paid in full*".

17. Concerning the amounts paid by the player as from March until May 2020, the club stressed that the Claimant was a part of collective agreement whereby all team's players accepted a 50% reduction of wages and "*upper playoff*" bonus.

18. In this context, the club explained that the Israeli Premier league was suspended by local authorities, as of 13 March 2020 until 30 May 2020, "*similar to most leagues in the world*".

19. As to the acceptance of the player to the said reduction, the club held that the players´ of the team delegated in the players Mr Dor Malul and Mr Gal Arel, who "*contacted each and every player in the team, including the Claimant himself*" and maintained that the player "*was among the unanimous approval of the players' side to this col lective understanding*".

20. In this context, the Respondent held that the terms of the collective bargaining agreement "*were fully accepted by the Claimant*" and that the player is only requesting the said moneys "*only a year later after the conclusion of the collective agreement* […] *long after he left the Respondent without any demands and claims* […]". In this context, the club held that the player is now "*requesting an unfair and unequal treatment, different from al l his other teammates*".

21. In connection with the requested bonus, the Respondent held that the 50% reduction also applied to it and that, hence, the player would only entitled to NIS 10,500. What is more, the Respondent explained that, "*From this amount, the Respondent deducted NIS 4,500 as a result of the Claimant's failure to pay speeding ticket imposed on the respondent during the independent control of the Claimant in the car that was provided to him by the Respondent"*.

22. In this context, the Respondent stressed that it only owed the player the amount of NIS 6,000, which it ty to pay to the Claimant, but the Claimant´s amount was "*closed by the Claimant*".

23. In conclusion, the Respondent highlighted that "*besides the amount of NIS 6,000 of the upper playoff bonus, the Respondent fully complied with all his obligations towards the Claimant*".

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

24. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) 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 23 April 2021 and submitted for decision on 29 July 2021. Taking into account the wording of art. 21 of 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.

25. 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 in combination with art. 22 lit. a) and b) of the Regulations on the Status and Transfer of Players (edition January 2021), the Dispute Resolution Chamber is, in principle, competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Guinean player and an Israeli club.

26. In this context, the DRC noted that the Respondent challenged the competence of FIFA to decide upon the present dispute. In particular, the DRC observed that the Respondent referred to clause 7 of the contract and held that, in accordance therewith, the Israel NDRC is the only competent body to decide upon the present matter. Moreover, the DRC acknowledged that the Respondent provided a translated version of the NDRC Regulations of Israel. In this context, continued the DRC, the Respondent held that the said NDRC does comply with the requirements set by FIFA and that the Israeli NDRC shall have exclusive competence to decide upon this dispute.

27. In this respect, underscored the DRC, It should be noted that clause 7 of the contract does not refer to a specific deciding body, since It simply refers to an arbitrator, "*who will be appointed by virtue of the power of the Associations' Arbitration Institute Codex*". In view of the broad draft of the above-quoted clause, the DRC concluded that clause 7 of the contract is not valid, as it is not specific enough. Thus, the DRC determined that the Dispute Resolution Chamber is competent to decide upon the present dispute.

28. 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 23 April 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

29. The Chamber 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 stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties.

30. In this respect, the Chamber 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

31. The competence of the DRC and the applicable regulations having been established, the DRC entered into the merits of the dispute. In this respect, the DRC started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the DRC emphasised that in the following considerations it 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

32. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the argumentation of the Respondent, which argued that the Claimant agreed to the conclusion of a bargaining agreement, whereby the Claimant accepted to be imposed a 50% reductions on his salaries as from March 2020 until May 2020, including the amounts due as per the qualification bonus (cf. point 6 G.) of the contract). In this respect, continued the DRC, the club provided witness statements produced by the players to which the player allegedly conferred representation powers to conclude such agreement.

33. In this regard, the DRC observed that the club failed to provide any power of attorney granted by the Claimant in order for the latter to be bound by a CBA concluded by 2 players of the club. What is more, stressed the DRC, even though the Respondent assures that the Claimant –through the said alleged representatives– accepted the 50% reduction on his financial entitlements due as from March 2020 until May 2020 (including the qualification bonus), the Respondent failed to provide any evidence regarding the conclusion of any such CBA, with the exception of the aforementioned witness statements, which were allegedly produced by 2 players of the club, Mr Dor Malul and Mr Gal Arel.

34. In this respect, emphasized the DRC, left alone the fact that witness statements produced by third parties should have limited relevance, the DRC observed that the said players continue to play for the Respondent club, meaning that they are not even impartial, since they are still professionally engaged with the Respondent (they are still register with the Respondent club) and, therefore, a relation of subordination exists. Hence, concluded the DRC, since the Respondent failed to sufficiently prove that a CBA accepting the aforementioned reduction on salaries and bonus was concluded, despite it carrying the burden of the proof, the allegations of the Respondent in this regard shall be rejected and it shall be considered that the player did not accept to be imposed any such reductions.

35. As to the amount due as salary and qualification bonus, whereas the Claimant requested the full amount indicated in the contract, as if those were net, explained the DRC, the Respondent argued that the amounts indicated in the contract are gross and that the player

was only entitled to the amounts indicated in the offer, which displays the conversion from NIS to USD and contemplated the net amounts due to the player.

36. Concerning the net amount of the salaries and bonus, continued the DRC, the Respondent did not only provide an offer signed by the player confirming what his net salaries and bonus in USD would be, but also a conversion of the salaries and bonus from NIS to USD, indicating that the monthly salary of the player for the relevant period amounts to USD 14,000, i.e. NIS 49,000 (conversion that checked by the DRC).

37. The same reasoning applies to the amount due as bonus, underscored the DRC, insofar the said letter indicates that the bonus amounts to USD 6,000, *i.e.* NIS 21,000 (conversion checked by the DRC).

38. Moreover, emphasized the DRC, considering that clause 6 of the contract specifically states that all amounts therein indicated are gross, the DRC determined that the argumentation of the Respondent, together with the evidence provided by the latter, suffices to confirm that the player was entitled to NIS 49,000 as monthly salary for the relevant period, as well as to NIS 21,000 as qualification bonus.

39. In connection with the salaries of January and February 2020, the DRC observed that the Claimant requested 50% of each of them, taking as basis the amount indicated in the contract, *i.e.* NIS 65,878 (the gross amount), whereas the Respondent held that the net amount of the salaries due for the said months was NIS 49,000 (cf. point above) and that those salaries were paid in full, with the exception of an amount of NIS 601 that was deducted from the salary of January 2020, because the player was imposed "*speed tickets, toll road fees*".

40. First of all, underscored the Chamber, having established that the salary of the player for January and February 2020 amounts to NIS 49,000 each, the claim of the Claimant to receive 50% of the gross salaries cannot be upheld. In continuation, stressed the DRC, it needs to be highlighted that a club is –in principle and unless otherwise contemplated in the contract– not entitled to offset amounts due by the player to the club against amounts due to the player as salary. In this context, explained the Chamber, given that the contract does not provide any such entitlement, the DRC unanimously concluded that the reduction of NIS 601 practiced by the club on the player´s salary of January 2020 was unlawful.

41. Regarding the argument of the Respondent that it paid both salaries in full, the DRC noted that the latter has provided evidence of having paid NIS 48,399 as salary of January 2020 and NIS 49,000 as salary of February 2020. Thus, the DRC determined that the Respondent partially complied with its financial obligations and that only the amount of NIS 601 shall be paid to the player, as it was unlawfully deducted.

42. As to the salaries due as from March until May 2020, as well as the qualification bonus, explained the DRC, the Claimant requested 50% of the said salaries, taking as basis the amount indicated in the contract, i.e. NIS 65,878 (the gross amount) and the bonus in full, whereas the Respondent held that, for the said period, the parties had validly concluded a

CBA, whereby the player accepted a 50% reductions on his financial entitlements. As has been already explained, stated the DRC, given that the Respondent failed to demonstrate that a CBA was ever concluded between the parties, the player is, in principle, entitled to receive his full salaries of March, April and May 2020, as well as the full amount of the requested bonus.

43. In this respect, the DRC noted that the Respondent provided evidence of having paid the following amounts to the player for the said considerations: NIS 26,876 as salary of March 2020; NIS 24,424 as salary of April 2020 and NIS 22,000 as salary of May 2020. Thus, the DRC concluded that the said amounts shall be deducted from the respective monthly salaries of NIS 49,000 each, which results in the following entitlement in favour of the player: NIS 22,124 as unpaid part of the salary of March 2020; NIS 24,576 as unpaid part of the salary of April 2020; NIS 27,000 as unpaid part of the salary of May 2020. By granting the said amounts to the player, wished to stress the DRC, the legal principle of law, *ultra petita*, is not contravened, considering that the amounts requested by the player as salaries for the said period are higher than the ones hereby awarded.

44. As to the bonus, explained the DRC, the player requested to be awarded the amount specified in the contract, *i.e.* NIS 30,284 ex. clause 6 G.) thereof. However, as already explained, the entitlement of the player for this consideration would be NIS 21,000 net. In this respect, continued the DRC, the Respondent firstly argued that the player was only entitled to 50% thereof as per the CBA, *i.e.* NIS 10,500; and that, from that amount, the amount of "*NIS 4,500 as a result of the Claimant's failure to pay speeding ticket imposed on the respondent*" and that, hence, it only owed the amount of NIS 6,000 to the player (10,500 – 4,500 = 6,000). In this respect, following the reasoning above explained, underscored the DRC, the Respondent was in no position to unilaterally offset the financial entitlements of the player. Hence, the DRC determined that the player is entitled to receive NIS 21,000 as bonus.

ii. Consequences

45. 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 and decided that, that the player is entitled to outstanding remuneration in the total amount of NIS 95,301 net, broken down as follows: NIS 601, plus 5% interest *p.a*. as from 1 February 2020; NIS 22,124, plus 5% interest *p.a*. as from 1 April 2020; NIS 24,576, plus 5% interest *p.a*. as from 1 May 2020; NIS 27,000, plus 5% interest *p.a*. as from 1 June 2020; NIS 21,000, plus 5% interest *p.a.* as from 1 June 2020 (in view of the absence of due date of the bonus, the DRC was of the opinion that it should have been paid at the end of the contract).

46. As to the application of art. 12bis of the Regulations, the DRC wished to explain that, even though the player provided a default notice in compliance with the requirements of the said article, the present case shall not be considered as an overdue payable case in the sense of

art. 12bis on the following grounds: 1.) the entitlement of the player to the said amounts required an analysis of the documentary evidence provided, it not being a straightforward matter, but rather the outcome reached upon the interpretation of the evidence on file; 2.) the amounts requested by the player in his default notice referred to the gross amounts indicated in contract and the amounts awarded are granted not only as per the contract, but also as per the offer and the payment proof provided by the Respondent (hence, there actually was a *prima facie* contractual basis not to pay the gross amounts requested by the player); 3.) the player requested a bonus, which payment was not fixed but rather required the occurrence of an event.

iii. Compliance with monetary decisions

47. Finally, taking into account the consideration under number 28. above, the Chamber 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.

48. In this regard, the DRC 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.

49. Therefore, bearing in mind the above, the DRC 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.

50. 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.

51. The DRC 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

52. 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.

53. 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.

54. 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

1. The claim of the Claimant, Francisco Santos da Silva Junior, is partially accepted.

2. The Respondent, Hapoel Haifa FC, has to pay to the Claimant outstanding remuneration in the amount of Israeli New Shekel (NIS) 95,301 net, plus 5% interest *p.a.*, as follows:

   – on the amount of NIS 601, as from 1 February 2020 until the date of effective payment;

   – on the amount of NIS 22,124, as from 1 April 2020 until the date of effective payment;

   – on the amount of NIS 24,576, as from 1 May 2020 until the date of effective payment;

   – on the amount of NIS 27,000, as from 1 June 2020 until the date of effective payment;

   – on the amount of NIS 21,000, 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 Dispute Resolution Chamber:

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