

Decision of the DRC Judge

passed on 11 August 2021

regarding an employment-related dispute concerning the player Maurice Sylla

BY:

Stijn Boeykens (Belgium), DRC Judge

CLAIMANT:

Maurice Sylla, France

Represented by Ms Laura Grange, UNFP

RESPONDENT:

CS Pandurii Liguitul Târgu Jiu, Romania

I. FACTS OF THE CASE

1. On 4 February 2021, the French player, Maurice Sylla (hereinafter: *Claimant*) and the Romanian club, CS Pandurii Liguital Târgu Jiu (hereinafter: *Respondent*) signed an employment contract (hereinafter: *contract*) valid as from signature until 31 December 2022.
2. According to art. 4.1 of the contract, the Claimant was entitled to a salary of EUR 1,000 net per month.
3. According to art. 4.2 of the contract, "*The club will pay to the player at the proposal of the head coach approved by the club's management, according to the minutes played, bonuses for the games, according in accordance with the provisions of the club's Rules of Procedure (...)*". Furthermore, the Claimant was entitled to a bonus of EUR 50 "*for every point*".
4. According to art. 4.2.3 of the contract, "*The club is designated as an income payer for the purpose of calculating, withholding and paying taxes and contributions by withholding*".
5. On 14 May 2021, the Claimant sent a default notice to the club regarding the non-payment of his salaries for February, March and April 2021. The Claimant granted the Respondent a deadline of 15 days to remedy the default.
6. On 17 May 2021, the Respondent responded and indicated that it was not in a position to pay the Claimant's salary since they were missing his tax identification number. As a consequence, the Respondent is unable to pay his salary, because it cannot pay the taxes to the Romanian state. The letter further states:

"With the signing of this contract, you became aware of the club's obligation to pay taxes to the Romanian state, in accordance with the Fiscal Code (...). Our club cannot pay salaries without taxes and cannot obtain, in your place, the NIF.

We have in mind that you (...) left our club on May 12, 2021, without announcing or handing over the room and equipment. We were notified of this by the team's head Coach (...).

Considering that you left our club on 12.05.2021, we ask you to send us by email the fiscal identification number in order to pay your salaries, in order to be able to legally received your money and to respect the Romanian law, both the fiscal one and the sports one".

7. On 1 June 2021, the Claimant replied to the Respondent's letter of 17 May 2021, highlighting that the Respondent's explanations as to the non-payment of his salaries were not valid, and he granted another 5 days for the Respondent to remedy the default, adding the salary for May 2021.

8. On 4 June 2021, the Respondent responded and referred the Claimant to the contents of its letter of 17 May 2021, while noting that the Claimant does not answer as to the fact that he was asked multiple times to provide his tax identification number. The Respondent highlighted that other players of the team have complied with that requirement and have received their salaries. The Respondent also specified that the Immigration Inspectorate require the presence of the Claimant to obtain the tax identification number; in this regard, the Claimant has refused to go to the Immigration office. The Respondent stated that the team's coach asked the Claimant several times to "*enter into legality*" and to appear at the Immigration Inspectorate, to no avail.
9. On 8 June 2021, the Claimant terminated the contract invoking just cause in light of the outstanding remuneration due to him.
10. The Claimant informed the FIFA administration that he remained unemployed following the termination of the contract.

II. PROCEEDINGS BEFORE FIFA

11. On 18 June 2021, the Claimant filed a claim for outstanding remuneration and compensation for breach of contract against the Respondent before FIFA. A brief summary of the parties' respective positions is detailed below.

a. The claim of the Claimant

12. According to the Claimant, since the start of the contract, he had not received any salary or bonus, until he terminated the contract on 8 June 2021, while he always respected his obligations. The Claimant deems that he terminated the contract with just cause in accordance with art. 14bis of the Regulations on the Status and Transfer of Players.
13. Furthermore, the Claimant alleged that he had had difficulties obtaining a copy of his contract and had requested it multiple times without obtaining a copy. The Claimant only obtained a copy of the contract on 1 April 2021 after the intervention of the French Union of Professional Players.
14. According to the Claimant, the Respondent tried to use some coercive measures by offering to sign a document whereby he would agree to receive his salaries due until 17 March 2021 in September 2021. The Claimant refused to sign such document. According to the Claimant, by presenting him with such a document, the Respondent recognised that it was already not respecting its financial obligations under the contract.
15. In continuation, anticipating the Respondent's arguments, the Claimant addressed the issue of the tax identification number. In this regard, the Claimant denied that the Respondent had ever requested him to provide his identification number prior to the letter of 17 May

2021. Moreover, the Claimant stated that, in any case, the Romanian legislation authorises the Respondent to apply for the Claimant's tax identification number on his behalf. Indeed, according to the Claimant, given the Respondent has the obligation to withhold and pay at source the various taxes and fees related to his employment, it is therefore quite logical that it can play for the tax identification number by itself to fulfil its tax obligations. The Claimant also recalled the contents of art. 4.2.3 of the contract.

16. The Claimant concludes that the Respondent acted in bad faith in the present matter.
17. With respect to his alleged absence as of 12 May 2021, the Claimant argued that he had been authorised by the team's coach to leave, since the championship and trainings had ended.
18. The requests for relief of the Claimant were the following:
 - Outstanding remuneration: EUR 4,266.66 corresponding to the salaries of February, March, April, May and 8 days of June 2021 + 5% interest as of the respective due dates,
 - Bonus payments: the Claimant invited the Respondent to provide a copy of its internal Regulations in order to be able to determine the bonus payments due to him,
 - Match bonuses: 7 x EUR 50 = EUR 350 + 5% interest as from the termination,
 - Compensation: EUR 18.733,34 corresponding to the residual value of the contract (remainder of June 2021 + entire season 2021/2022 + season 2022/2023 until December 2022) + 5% interest as of the termination,
 - EUR 5,000 in legal fees.

b. Position of the Respondent

19. In reply to the player's claim, the Respondent reiterated its arguments as to the fact that, allegedly, the Claimant refused to register with the fiscal authorities.
20. The Respondent referred to its letter of 17 May 2021, wherein it is stated that it had requested the Claimant multiple times to provide his tax identification number.
21. In this context, the Respondent referred to Art. 11, 12 and 13 (OUG 102/2005) of the law establishing the conditions for exercising the right to free movement, residence and permanent residence on the territory of Romania and stated that, in order to register and issue the registration certificate, the citizens of the European Union will submit to the headquarters of the competent territorial formation of the Romanian Immigration Office,

- within 3 months from the date of entry on the Romanian territory. According to the Respondent, paying the Claimant's salary without him being registered with the tax authorities would consist in tax evasion, which the Respondent refused to do.
22. In addition, the Respondent explained that it is in a process of judicial reorganisation and therefore it is required to pay taxes for all its employees.
 23. The Respondent specified that other foreign Claimants accepted to be accompanied by a club official to the Immigration office in order to be registered. On the other hand, several other foreign players, including the Claimant, refused to do so "*under various subterfuges*".
 24. The Respondent concluded that it is not opposed to paying the Claimant's remuneration for the time during which he was at the Respondent, provided it is done in accordance with the applicable laws.
 25. Finally, the Respondent underlined that there is a practice of players trying to evade taxation and that this practice shall be stopped.

III. CONSIDERATIONS OF THE DRC JUDGE

a. Competence and applicable legal framework

26. First of all, the 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 18 June 2021 and submitted for decision on 11 August 2021. Taking into account the wording of art. 21 of the currently in force 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.
27. 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 in force in the date of decision), the DRC Judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a French player and a Romanian club.
28. 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 18 June 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 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 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 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

31. 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

32. 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 the Claimant had terminated the contract with just cause on 8 June 2021.
33. In this context, the DRC Judge took note of the Claimant's claim that, since the start of the employment relationship, he had not received any salaries from the Respondent and that he had proceeded to the unilateral termination of the contract in accordance with art. 14bis of the Regulations. The Claimant also alleged that the Respondent had asked him to sign a document whereby he would agree to postpone the payment of his salaries to September 2021.
34. The Respondent, for its part, denied the Claimant's claim and explained that the non-payment of the salary was due to a tax issue, since the Claimant allegedly refused to register with the tax authorities in spite of having been requested by the Respondent. According to the latter, such attitude on the Claimant's part was a tactic to avoid the payment of taxes; the Respondent did not want to be a part of such scheme and therefore did not pay his salaries until the Claimant would receive a tax identification number. The Respondent relies on Romanian law without, however, having produced a copy of the relevant law.
35. The Respondent also underlined that the Claimant had been absent from the club since 12 May 2021 without authorisation.

36. Analysing first the Respondent's arguments with respect to the non-payment of the Claimant's salary, the DRC Judge first noted that he could not verify the contents of Romanian law as to the issue of taxation. In any event, and although the employment contract does refer to Romanian law as the applicable law in the context of the implementation of the contract, the DRC Judge was adamant that this could not mean that the Claimant would be expected to know and understand the specificities of Romanian tax law.
37. Furthermore, the DRC Judge acknowledged that the Respondent did not provide evidence that the Claimant was informed, multiple times, that he should register with the local tax authorities himself; in fact, the only evidence of such information is the letter dated 17 May 2021 from the Respondent. Such letter was sent only after the Claimant had put the Respondent in default of the payment of his salaries since February 2021. The DRC Judge, therefore, concluded, assuming that the Claimant indeed had to registered with the tax authorities himself, that the Respondent had informed him of such fact manifestly too late, considering the contract was running since February 2021.
38. In view of the above, the DRC Judge rejected the Respondent's arguments as to the alleged obligation of the Claimant to register with the tax authorities in order for them to pay his salaries.
39. In continuation, the DRC Judge noted that the Respondent's had not contested the contents of the document provided by the Claimant and dated 17 March 2021. Such document appears to consist in a draft of an agreement, whereby the parties would have accepted to postpone the payment of the Claimant's salary due until 17 March 2021 to September 2021. In the DRC Judge's view, such document shows that the Respondent had acknowledged owing outstanding remuneration to the Claimant until that date, meaning the Respondent was acting in breach of contract already at the time.
40. Finally, as to the player's absence from the club since 12 May 2021, which the Claimant does not appear to contest, the DRC Judge held that, considering the outstanding remuneration due to him at the time, the fact that the Claimant was absent from the Respondent cannot be held against the latter. Indeed, the Claimant had, at the time, already put the Respondent in default of payment of his remuneration and it is established that the Respondent was in fact in breach of its own contractual obligations.
41. In conclusion, considering that i) the Respondent had failed to pay the Claimant's salary for more than two months without justification and ii) the Claimant had duly put the Respondent in default and granted the latter a deadline of at least fifteen days to remedy the default, to no avail, the DRC Judge decided that the Claimant had terminated the contract with just cause on 8 June 2021 in accordance with art. 14bis of the Regulations.
42. Consequently, the Respondent is to be held liable for the early termination of the contract.

43. Bearing in mind the previous considerations, the DRC Judge went on to deal with the consequences of the early termination of the employment contract with just cause by the Claimant.
44. First, the DRC Judge held that the Respondent must fulfil its obligations as per employment contract up until the date of termination of the contract in accordance with the general legal principle of *pacta sunt servanda*.
45. On account of the above considerations and the documentation on file, the DRC Judge decided that the Respondent is liable to pay to the player Claimant the remuneration that was outstanding at the time of the termination i.e. the salaries of February, March, April and May 2021 in the total amount of EUR 4,000. The month of June 2021 shall be assessed in the calculation of the compensation for breach of contract as that month was not outstanding at the time of the termination of the contract.
46. In addition, taking into account the Claimant's claim as well as the DRC Judge's longstanding jurisprudence in this respect, the DRC decided to award the Claimant interest of 5% p.a. on the aforementioned amount as follows:
 - 5% interest p.a. on the amount of EUR 1,000 as from 1 March 2021 until the date of effective payment,
 - 5% interest p.a. on the amount of EUR 1,000 as from 1 April 2021 until the date of effective payment,
 - 5% interest p.a. on the amount of EUR 1,000 as from 1 May 2021 until the date of effective payment,
 - 5% interest p.a. on the amount of EUR 1,000 as from 1 June 2021 until the date of effective payment.
47. In continuation, the DRC analysed the Claimant's claim for match bonuses and took note of the fact that the Claimant had provided evidence of the relevant matches played as well as the points achieved. Consequently, the Respondent shall pay the additional amount of EUR 350, i.e. 7 x EUR 50 as match bonuses, to which 5% interest p.a. shall be applied as of 8 June 2021 until the date of effective payment, as claimed.
48. In continuation, the DRC Judge decided that, taking into consideration art. 17 par. 1 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract in addition to any outstanding remuneration on the basis of the relevant employment contract.
49. In this context, the DRC Judge outlined that, in accordance with said provision, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Claimant under the existing contract and/or

- the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
50. Furthermore, the DRC Judge established that, considering the Claimant terminated the contract due to overdue payables, art. 17 par. i and ii. apply to the present matter.
 51. In application of the relevant provision, the DRC Judge held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the DRC Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
 52. Subsequently, and in order to evaluate the compensation to be paid by the Respondent, the DRC Judge took into account the remuneration due to the Claimant in accordance with the employment contract as well as the time remaining on the same contract, along with the professional situation of the Claimant after the early termination occurred. In this respect, the DRC Judge pointed out that at the time of the termination of the employment contract on 8 June 2021, the contract would run until December 2022, this is, for nineteen months. Consequently, taking into account the financial terms of the contract, the Chamber concluded that the remaining value of the contract as from its early termination by the Respondent until the regular expiry of the contract amounts to EUR 19,000 and that such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.
 53. In continuation, the DRC Judge remarked that, following the early termination of the employment contract at the basis of the present dispute, the Claimant remained unemployed and could therefore not mitigate his damage. Consequently, in accordance with art. 17 par. 1 i. of the Regulations, the Claimant is entitled to receive the residual value of the contract as compensation for breach of contract.
 54. In conclusion, the DRC Judge decided that the Respondent must pay EUR 19,000 to the Claimant as compensation for the early termination of the contract. Furthermore, 5% interest p.a. shall apply on the said amount as from the date of the lodging of the claim, i.e. 18 June 2021, until the date of effective payment.

ii. Compliance with monetary decisions

55. Finally, 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.
56. 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.

57. 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.
58. 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.
59. 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

60. 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.
61. 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. Therefore, the Claimant's claim for legal fees is rejected.

IV. DECISION OF THE DRC JUDGE

1. The claim of the Claimant, Maurice Sylla, is partially accepted.
2. The Respondent, CS Pandurii Liguitul Târgu Jiu, has to pay to the Claimant the following amounts:
 - EUR 4,750 net as outstanding remuneration plus 5% interest p.a. as follows:
 - o 5% interest p.a. on the amount of EUR 1,000 as from 1 March 2021 until the date of effective payment,
 - o 5% interest p.a. on the amount of EUR 1,000 as from 1 April 2021 until the date of effective payment,

- 5% interest p.a. on the amount of EUR 1,000 as from 1 May 2021 until the date of effective payment,
 - 5% interest p.a. on the amount of EUR 1,000 as from 1 June 2021 until the date of effective payment,
 - 5% interest p.a. on the amount of EUR 750 as from 8 June 2021 until the date of effective payment.
- EUR 19,000 net as compensation for breach of contract but 5% interest p.a. on the said amount as from 18 June 2021 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 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:



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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