

Decision of the Dispute Resolution Chamber

passed on 15 July 2021

regarding an employment-related dispute concerning the player Andrei Vshivtsev

COMPOSITION:

Omar Ongaro (Italy), Deputy Chairman
Stéphane Burchkalter (France)
Abu Nayeem Shohag (Bangladesh), member

CLAIMANT:

Andrei Vshivtsev, Russia

RESPONDENT:

FC Dnepr-Mogilev, Belarus

I. Facts

1. On 22 August 2018, the Claimant and FC Dnepr concluded an employment contract valid as from the date of signature until 3 December 2018.
2. According to art. 1.3.1 of the contract, the player was entitled to BYN 159.36 per month.
3. By orders of the Club No. 202-k dated 5 November 2018 due to unsatisfactory sports results of the Club, the Claimant's "high performance bonus" was reduced by the amount of BYN 2 883,81 for October 2018
4. By order No. 220- of 30 November 2018, due to the same reasons, the players' "high performance bonuses" was reduced by BYN 2 596,00 for November 2018
5. According to the player, together with other players of FC Dnepr, he tried to collective claim before Belarus Football Federation on 4 December 2018
6. On 22 March 2021 the Claimant sent the default note to FC Dnepr Mahilyow regarding outstanding payments of his salary in the total amount of BYN 5 479,81, setting a time limit of 15 (fifteen) calendar days (until 7 April 2021), and noting that said club is *"is a sporting and legal successor of FC Dnyapro. This fact was confirmed by the Decision of the FIFA Dispute Resolution Chamber passed on 10 December 2020 No. REF 20-00452."*
7. On 28 May 2021, the player lodged a claim before FIFA and requested the payment of the outstanding amount of BYN 5,479.81 net, plus 5% interest p.a. as from the due dates, corresponding to the amounts deducted by the orders of 5 November 2018 and 30 November 2018.
8. In its reply to the Claim, FC Dnipro-Mogilev stated that it "cannot explain the objectivity of the reduction of allowances for unsatisfactory results of matches due to the fact that the "Institution" is not and has never been the legal successor (...) "Football Club Dnipro".
9. However, the club argued that "it is obvious that based on the terms of the contract attached by the Player, we note that such reduction was provided for by the contract.
10. The club further underlined that the claim is time-barred, since more than two years have elapsed since November 2018.
11. In his replica, the player insisted that the condition of the Respondent as sporting successor was already established in the matter 20-00452, and that said decision was not appealed.
12. The player argued that the reference to the provisions of the Belarusian legislation in this case *"is not applicable, since the Respondent, being a member of the Belarus Football Federation, is obliged to comply with the specialised regulations and rules established by the FIFA, i.e. lex sportiva, which will take precedence over national rules in an international dispute involving stakeholders of organised football."*
13. The Claimant further considered that art. 25 par. 5 shall not be applied since *"the present dispute is mainly regulated by the article 24ter to the Regulations (Implementation of decision*

and confirmation letters), which came into force only on 1 January 2020. Hence, the Claimant received the chance to protect his rights reasonably and in a proper manner only after 1 January 2020, which, in general, should be recognized as a start of the time limit calculation."

14. As final comments, the Respondent insisted that the claim is time-barred.

II. Considerations of the Dispute Resolution Chamber

1. 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. 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.
2. Subsequently, the Dispute Resolution Chamber referred to art. 3 par. 1 of the Procedural Rules and emphasised 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, the Dispute Resolution Chamber is competent to deal with matters which concern employment-related disputes with an international dimension between players and clubs.
3. Having this in mind, the DRC stressed on the content of art. 25 par. 5 of the Regulations on the Status and Transfer of Players which reads as follows: *"The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case"*.
4. In view of the above, the Chamber had to determine which is the event giving rise to the present dispute. In doing so, the DRC deemed it important to emphasize the claim is related to remuneration allegedly due until December 2018.
5. Having said this, the Chamber recalled that the claim was lodged on 28 May 2021, i.e. clearly more than two years after said salaries would have been due.
6. On account of all the above, and considering that more than two years have elapsed between the event giving rise to the dispute, the Chamber concluded that the Claimant's claim must be considered barred by the statute of limitations in accordance with art. 25 par. 5 of the Regulations.
7. In light of the above, the DRC decided that the claim of the Claimant is inadmissible.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Andrei Vshivtsev, is inadmissible.

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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