

# Decision of the Dispute Resolution Chamber

passed on 7 April 2022

regarding an employment-related dispute concerning the player Marko Jankovic

## BY:

**Frans de Weger (Netherlands)**, Chairperson  
**Michele Colucci (Italy)**, member  
**Jerome Perlemuter (France)**, member

## CLAIMANT:

**Marko Jankovic, Bosnia and Herzegovina / Montenegro**  
Represented by SPF Bosnia and Herzegovina

## RESPONDENT:

**Beitar Jerusalem, Israel**  
Represented by Natali Rozenberg

## I. Facts of the case

1. On 10 February 2021, the Bosnian/Montenegrin player Marko Jankovic (hereinafter: *the player*) and the Israeli club Beitar Jerusalem (hereinafter: *the club*) concluded an employment agreement (hereinafter: *the contract*), valid between 10 February 2021 and 31 May 2023, based on which the player was entitled to the following amounts:
  - EUR 60,000 during the season 2020/2021;
  - EUR 150,000 during the 2021/2022 season, payable in 10 instalments of EUR 15,000 each;
  - EUR 150,000 during the 2022/2023 season, payable in 10 instalments of EUR 15,000 each.
2. Moreover, based on the contract, the player was also entitled to one roundtrip flight ticket per season.
3. What is more, also on 10 February 2021, the player and the club concluded an “Agreement for the purchase of economic rights”, based on which the player, which held all of his economic rights, transferred his economic rights to the club in exchange for an amount of EUR 300,000, payable in 20 instalments of EUR 15,000 each.
4. On 26 January 2022, the player was invited to a meeting with the CEO and Chairman of the club, where he was handed over a termination letter, by means of which his contract was unilaterally terminated by the club.
5. On 3 February 2022, the player signed a new contract with the Israeli club Hapoel Tel Aviv, valid between ‘*the remainder of the season 2021/2022*’ and ‘*the season 2022/2023*’, based on which he was entitled to receive an amount of ILS 138,000 gross for the period between February and May 2022 and an amount of ILS 346,000 gross for the season 2022/2023. The total amount of the new contract is thus ILS 484,000 gross or EUR 135,439 gross. The player did not demonstrate the net amount of said gross amount.

## II. Proceedings before FIFA

6. On 17 February 2022, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### a. Position of the player

7. In his claim, the player explains that based on the contract and agreement he signed, he was thus entitled to an amount of EUR 30,000 per month as of 9 September 2021.

8. In addition, the player explains that after he was handed over the letter dated 10 January 2022, he was not allowed to train with the club's teams anymore and he was requested to find a new club, which was according to the player not possible in a swift way, as the transfer window would was *'in its last days'*.
9. The requests for relief of the player were the following:
  - EUR 30,000 as outstanding salary for the month of January 2021, plus 5% interest *p.a.* as from the respective due date;
  - The value of two roundtrip tickets, plus 5% interest *p.a.* as from the due date.
  - EUR 450,000 as compensation for breach of contract, plus 5% interest *p.a.* as from 26 January 2022, the date of termination of the contract;
  - EUR 180,000 as additional compensation, plus 5% interest *p.a.* as from 26 January 2022, the date of termination of the contract;
  - EUR 5,000 as legal costs.

#### **b. Position of the club**

10. In its reply, the club explained that it was in serious financial problems due to a conflict with its owner, and was even placed under the direction of the Israel Football Association Budget Control Authority.
11. What is more, the club deems that it terminated the contract with just cause, due to the financial crisis it was in.
12. Alternatively, in case the DRC deems that the termination was made without just cause, the club asks that the salary the player is currently earning with Hapoel Tel Aviv shall be deducted from the compensation awarded. The club also denies the player's request for additional compensation.

### **III. Considerations of the Dispute Resolution Chamber**

#### **a. Competence and applicable legal framework**

13. 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 17 February 2022 and submitted for decision on 7 April 2022. Taking into account the wording of art. 34 of the October 2021 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
14. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. b) of the

Regulations on the Status and Transfer of Players (March 2022 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Bosnian and Montenegrin player and an Israeli club.

15. 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 Players (March 2022 edition), and considering that the present claim was lodged on 17 February 2022, the August 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### **b. Burden of proof**

16. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 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 Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

#### **c. Merits of the dispute**

17. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber 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**

18. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute whether or not the club can be held liable for non-compliance of its contractual obligations and whether or not it shall be held responsible for the consequences of the termination of the contract on 26 January 2022.
19. In this context, the Chamber acknowledged that its task was to determine, based on the evidence presented by the parties, whether or not the player had a just cause to terminate the contract on 26 January 2022 and whether the club is to be held liable for the consequences of said termination.
20. First of all, the members of the Chamber noted that the agreement on the purchase of economic rights, concluded between the club and the player, and which is under the current

Regulations a valid agreement) provides for an additional monthly amount of EUR 15,000. Therefore, the members of the Chamber concluded that in the scope of the employment relationship between the club and the player, the player was entitled to a total monthly remuneration of EUR 30,000.

21. Also, the members of the Chamber established that based on the contents of the contract, it can be assumed that the player was not entitled to any salary payments in the months of June and July of each contract year.
22. What is more, the Chamber was eager to emphasise that only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to ensure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an *ultima ratio* measure.
23. In view of the above, the Chamber first of all observed that the club never suddenly, from the one day to the other, had terminated the contract with the player, without providing any reason whatsoever.
24. What is more, the argumentation brought forward by the club in reply to the player's claim, alleging that it was suffering from financial problems, cannot be considered as a valid reason to not comply with its contractual obligations and/or to unilaterally terminate the contract.
25. On account of the above, the Chamber decided that the club had terminated the employment contract without just cause on 26 January 2022 and that, consequently, it is to be held liable for the early termination of the employment contact without just cause. As a result, the player is entitled to outstanding remuneration and compensation for breach of contract.

## ii. Consequences

26. 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 club.
27. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, are equivalent to EUR 30,000, i.e. the salary for the month of January 2021.
28. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the club is liable to pay to the player the amounts which were outstanding under the contract at the moment of the termination, i.e. EUR 30,000.

29. In addition, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest at the rate of 5% *p.a.* on the outstanding amounts as from 1 February 2022 until the date of effective payment.
30. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, 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 player 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.
31. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
32. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
33. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of EUR 420,000 (i.e. the residual value of both the contract and the agreement on the purchase of economic rights) serves as the basis for the determination of the amount of compensation for breach of contract.
34. In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
35. Indeed, the player found employment with the Israeli club Hapoel Tel Aviv. In accordance with the pertinent employment contract, the player was entitled to approximately the total

amount of ULS 484,000 gross, corresponding to approximately EUR 135,439 gross and also noted that the player was not able to demonstrate what the corresponding net amount of said gross amounts were. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of EUR 135,439.

36. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber however confirmed that the contract termination was made by the club.
37. In this respect, the DRC decided to not award the amount of additional compensation to the player.
38. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of EUR 284,561 to the player (i.e. EUR 420,000 minus EUR 135,439), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
39. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% *p.a.* as of 17 February 2022, the date of claim, until the date of effective payment.

### **iii. Compliance with monetary decisions**

40. Finally, taking into account the applicable Regulations, the Chamber referred to art. 24 par. 1 and 2 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.
41. 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.
42. Therefore, bearing in mind the above, the DRC decided that the club must pay the full amount due (including all applicable interest) to the player within 45 days of notification of the decision, failing which, at the request of the player, 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 club in accordance with art. 24 par. 2, 4, and 7 of the Regulations.

43. The club shall make full payment (including all applicable interest) to the bank account provided by the player in the Bank Account Registration Form, which is attached to the present decision.
44. 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. 24 par. 8 of the Regulations.

#### **d. Costs**

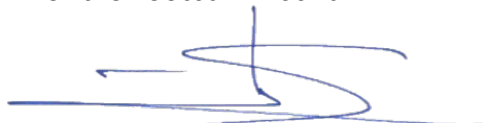
45. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
46. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
47. 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, Marko Jankovic, is partially accepted.
2. The Respondent, Beitar Jerusalem, has to pay to the Claimant, the following amount(s):
  - EUR 30,000 as outstanding remuneration, plus 5% interest *p.a.* as from 1 February 2022 until the date of effective payment;
  - CHF 450 as reimbursement of the costs of a flight ticket;
  - EUR 284,561 as compensation for breach of contract without just cause, plus 5% interest *p.a.* as from 17 February 2022 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 art. 24 of the Regulations on the Status and Transfer of Players (August 2021 edition), if full payment (including all applicable interest) is not made **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 the ban shall be of up to 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 made by the end of the three entire and consecutive registration periods.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
7. This decision is rendered without costs.

For the Football Tribunal:



**Emilio García Silvero**

Chief Legal & Compliance Officer

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#### **NOTE RELATED TO THE APPEAL PROCEDURE:**

According to article 57 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 17 of the Procedural Rules).

#### **CONTACT INFORMATION**

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