

Decision of the Dispute Resolution Chamber

passed on 7 April 2022

regarding an employment-related dispute concerning the player Miguel Palha

BY:

Frans de Weger (Netherlands), Chairperson

Michele Colucci (Italy), member

Jérôme Perlemuter (France), member

CLAIMANT:

Miguel Palha, Portugal

Represented by João Rodrigues de Oliveira

RESPONDENT:

F91 Dudelange, Luxemburg

I. Facts of the case

1. On 31 May 2019, the Portuguese player Miguel Palha (hereinafter: *the player*) and the Luxembourg club Union Tirus Pétange (hereinafter: *Pétange*) concluded an employment contract (hereinafter: *the contract*), valid between 1 July 2019 and 31 May 2022 (in which it is explicitly mentioned that the season 2021/2022 is optional for the club), based on which the player was entitled to receive a monthly salary of EUR 2,070.
2. On 26 January 2021, Pétange and the Luxembourgian club F91 Dudelange (hereinafter: *Dudelange*) concluded a transfer agreement for the transfer on loan basis of the player, in which Pétange agreed with the player '*getting a license at Dudelange*' and based on which Dudelange committed to pay EUE 4,000.
3. On 30 January 2021, the player and Dudelange signed an employment agreement (hereinafter: *the loan contract*), valid between 1 February 2021 and the end of the 2021/2022 season, with a unilateral option for the club to extend the contract – before 30 March 2022 – for the 2022/2023 season, i.e. until 30 June 2023.
4. Based on the loan contract, the player was entitled to a sign-on fee of EUR 1,000, a monthly salary of EUR 1,500 between February and June 2021, and a monthly salary of EUR 2,000 for the 2021/2022 season.
5. In January 2021, Pétange wished to loan the player to Dudelange as from 1 February 2021, with the intention to make the loan permanent in the summer registration period before the 2021/2022 season, however the player explains that he was not provided with the loan agreement.
6. On 28 July 2021, Pétange informed Dudelange that it did not want the player back anymore. On the same day, Dudelange replied that it had signed a transfer agreement with Pétange on 26 January 2021 and that on 30 January 2021, a loan contract was signed between the player and Dudelange.
7. On 19 October 2021, the player put Dudelange and Pétange in default, as he only received 3 monthly salaries (allegedly for the months of August, September and October 2021) in the 2021/2022 season from Dudelange, but afterwards, both Dudelange and Pétange refused to provide him with work or the payment of his monthly salaries.
8. On 27 October 2021, Pétange informed the player that it had no contract with him anymore and that it was the player who decided to leave the club in May 2020.
9. On 23 December 2021, the player put again Dudelange and Pétange in default, asking for all documentation related to his employment situation, including loan agreements, as well as asking for the payment of his monthly salaries.

10. On 4 January 2022, Pétange refused to provide a copy of the loan agreement and denied that any remuneration was outstanding.
11. At the end of January 2022, Dudelange requested the player to sign a document, confirming that all salaries had been paid until 31 December 2021, which the player refused to do.
12. On 1 January 2022, the player signed a new contract with the Luxembourg club FC Alisontia Steinsel, valid for the second half of the season 2021/2022.

II. Proceedings before FIFA

13. On 22 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

14. In his claim, the player explains that his registration with Dudelange (a loan followed by a definitive registration) was apparently not allowed under the national legislation of the Luxembourg FA, but he was never informed as to why the transfer to Dudelange failed.
15. What is more, the player explains that Dudelange however confirmed that it would continue to pay his salaries, even though he could not be registered.
16. The requests for relief of the player, as amended, were the following:
 - EUR 6,000 as outstanding remuneration, corresponding to the salaries for July, November and December 2021, plus 5% interest p.a. as from the respective due dates;
 - EUR 12,000 as moral damages (according to the player also to be called additional compensation), corresponding to the six months between July and December 2021, he was unable to play, plus 5% interest p.a. as from 31 December 2021.

b. Position of Dudelange

17. In its reply, Dudelange explains that there are two categories of national transfers, i.e. a temporary national transfer and a definitive transfer, and that there are also special rules for the transfer of players licensed with a foreign federation and having been previously licensed by the FLF, and explains that it followed all these rules in the matter at hand.
18. In this respect, Dudelange explains that – since the player was a foreign player, who signed a contract with Pétange on 1 July 2019 – it was impossible for the player, based on art. 32 of the Regulations on licensed members to temporarily transfer to another Luxembourgian club

before 1 July 2020 and or to definitely transfer to another Luxembourgian club before 1 July 2022.

19. Based on the foregoing, Pétange, Dudelange and the player signed on 30 January 2021 a loan document from the Football Federation of Luxembourg (FLF), in which the following remark was made: *'According to agreement between the parties, a temporary transfer for the season 2021/2022 and a definitive transfer for the season 2022/2023'*.
20. What is more, in view of the 2021/2022 season, Dudelange took steps to confirm the temporary transfer of the player for the 2021/2022 season on another form of the FLF, but Pétange refused to sign said document. After Dudelange consequently sent the form to FLF, it was informed that the temporary transfer of the player to Dudelange was not possible, as Pétange had exceeded the maximum number of temporary transfers allowed in Luxembourg. As a result, the player could not be registered for Dudelange in the 2021/2022 season and allegedly remained registered with Pétange.
21. Based on the foregoing, Dudelange deems that the contract it concluded with the player is null and void and that it is not obliged to pay the player salaries as from 1 July 2021, also because the registration of the player remained with Pétange and based on internal regulations of the FLF, it is forbidden to pay the salaries of the player of another club.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

22. 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 22 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.
23. 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 Portuguese player and a Luxembourgian club.
24. 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 22 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

25. 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

26. 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

27. 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 Dudelange is responsible to pay the player salaries for the period between 1 July 2019 and 31 December 2019, since the player could not be properly registered for Dudelange, as the regulations of the Luxemburg Football Federation did not allow a temporary transfer of the player to another Luxembourgian club before 1 July 2020.
28. In this context, the Chamber acknowledged that its task was to determine whether the reasons brought forward by Dudelange did exempt it from its contractual obligations.
29. In this context, the Chamber first of all reminded the parties that, in line with the contents of art. 18 par. 4 of the Regulations, as well as the jurisprudence of FIFA, the validity of an employment contract cannot be made conditional upon the execution of (administrative) formalities, such as, but not limited to, the registration procedure in connection with the international transfer of a player, which are of the sole responsibility of a club and upon which a player has no influence. As the club is supposedly interested in acquiring the rights of the player and in benefiting from his services, it is also expected to act accordingly and execute the administrative formalities in view of obtaining, for instance, the player's ITC and his subsequent registration with the engaging FA. Consequently, the registration or not of the contract is irrelevant in determining if the contract was a valid and binding document.

30. Based on the foregoing, the Chamber rejected Dudelange's objection that it would be obliged to pay the salaries of the player in the period between July and December 2021 as the registration of the player could not properly be done in Luxembourg.
31. What is more, the Chamber recalled its well-established jurisprudence which dictates that, in order for an employment contract to be considered as valid and binding, apart from the signature of both the employer and the employee, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship and the remuneration payable by the employer to the employee.
32. *In casu*, after a thorough analysis of the documentation on file, the Chamber concluded that all such elements were included in the document filed by the player. In other words, the Chamber understood that the contract concluded by the parties indeed included all the relevant information at the basis of an employment relationship between contractual parties. Thus, the Chamber concluded that the player and Dudelange had effectively concluded, on 31 January 2021, a valid and binding employment contract for the period between 1 February 2021 and (at least) the end of the 2021/2022 season.
33. As such, the members of the Chamber deemed that it was the responsibility of Dudelange to pay the salaries to the player in the 2021/2022 season, which it allegedly had not completely done, as on 1 July 2021, it actually departed from the contract by alleging that the player was not properly registered, however on the same time still paying the player his salaries for the months of August, September and October 2021.
34. Based on the foregoing, the Chamber concluded that Dudelange was bound to a valid employment contract with the player in the claimed period between 1 July and 31 December 2021, and that it shall be considered that it breached said contract without just cause on 1 July 2021.

ii. Consequences

35. 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 Dudelange.
36. The Chamber observed that the player's claim is limited to the period between 1 July 2021 and 31 December 2021, for which period the player requested to be paid the salaries he did not receive (August, November and December 2021). What is more, the members of the Chamber noted that from the information on file, it appears that Dudelange stopped executing the contract after 1 July 2021, when the registration issues at the FLF arose.
37. As a consequence of the foregoing circumstances, and taking into account that the parties had allegedly departed from the contract as from 1 July 2021, the members of the Chamber concluded that there was no outstanding remuneration to be awarded to the player, since

the claim of the player was limited to monies payable after the termination of the contract between the parties.

38. 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.
39. 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.
40. 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.
41. 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 12,000 (i.e. the 6 monthly salaries in the amount of EUR 2,000 each due in the period between July and December 2021) serves as the basis for the determination of the amount of compensation for breach of contract.
42. 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.
43. In this respect, it turns out that the player, in the period between 1 July and 31 December 2021, was not able to find new employment with another club. As a result, the members of

the Chamber took into account that in principle, no further mitigation or additional compensation shall be applied in the matter at hand.

44. However, taking into account that the player limited his claim to the total amount of EUR 6,000 for the months of July, November and December 2021, and based on the legal principle of *non ultra petita*, the Chamber decided that Dudelange must pay the amount of EUR 6,000 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
45. 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 22 March 2021 until the date of effective payment.
46. What is more, the members of the Chamber decided that the player's requests for moral damages and/or additional compensation shall be rejected, as it overlaps with the requests for the payment of the salaries for the months of July, November and December 2021 and there is no regulatory basis to award amounts claimed as moral damages to the player.

iii. Compliance with monetary decisions

47. 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.
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 Dudelange 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 Dudelange in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
50. Dudelange 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.

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. 24 par. 8 of the Regulations.

d. Costs

52. 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.
53. 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.
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, Miguel Palha, is partially accepted.
2. The Respondent, F91 Dudelange, has to pay to the Claimant, the following amount:
 - EUR 6,000 as compensation for breach of contract without just cause, plus 5% interest *p.a.* as from 22 March 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 indicated in the enclosed Bank Account Registration Form.
5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players 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 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 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 article 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

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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