FIFA FOOTBALL TRIBUNAL

Decision of the Dispute Resolution Chamber

passed on 21 July 2022

regarding an employment-related dispute concerning the player Douglas Silva Bacelar

COMPOSITION:

DE WEGER, Frans (The Netherlands), Chairperson
ATILIO TARABORELLI, Alejandro (Argentina), Member
VERMEER, Roy (The Netherlands), Member

CLAIMANT:

Douglas Silva Bacelar, Brazil
Represented by Bichara & Motta Advogados

RESPONDENT:

Giresunspor, Turkey

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I. Facts of the case

1. On 12 June 2021, the Brazilian player, Mr Douglas Silva Bacelar (hereinafter: *the player* or *the Claimant*), and the Turkish club, Giresunspor (hereinafter: *the club* or *the Respondent*), concluded an employment contract valid as from 1 July 2021 until 31 May 2022 (hereinafter: *the employment contract*).

2. In accordance with article 6 of the employment contract, the club undertook to pay the player, *inter alia*, the following amounts:

    a. EUR 360,000 net as salary, payable in 10 monthly equal instalments of EUR 36,000 each by the last day of the relevant month between August 2021 and May 2022;

    b. EUR 56,000 net as advance payment on 21 June 2021; and

    c. EUR 16,000 net as guaranteed payment on 31 October 2021.

3. Article 6.2. of the employment contract also established that the player would be entitled, *inter alia*, to "*4 (four) round-trip flight tickets to his country, Giresun – Sao Paolo per season for the use of the player himself*".

4. On 3 February 2022, the player put the club in default for a total amount of EUR 124,000 net, corresponding to his salaries of November 2021, December 2021, and January 2022, as well as the guaranteed payment that fell due on 31 October 2021. The player granted the club a 15 days' deadline to cure the breach.

5. On 22 February 2022, the player sent the club a "*final reminder*" of its dues and requested the total of EUR 124,000 to be paid within the following 5 days.

6. On 21 March 2022, the player notified the club the termination of the employment contract due to overdue payables.

7. On 22 March 2022, the player, his wife, and daughter travelled from Trabzon (Turkey) to Flarianópolis (Brazil) with stopovers in Istanbul (Turkey) and São Paulo (Brazil). The flight tickets costed TRY 59,810.78 for the three passengers in accordance with the evidence provided by the player.

8. The player informed that he remained unemployed after the termination of the employment contract.

II. Proceedings before FIFA

9. On 28 April 2022, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Claim of the player

10. According to the player, he fulfilled his contractual obligations, but the club failed to comply with the correspondent financial duties. As such, the player argued that the employment contract was terminated with just cause in line with art. 14bis of the FIFA Regulations on the Status and Transfer of Players (**RSTP**).

11. The player also referred to the Swiss Law and the jurisprudence of the Court of Arbitration for Sport (**CAS**) on the matter.

12. In light of the above, the player requested to be awarded the following amounts:

    a. EUR 160,000 net as outstanding remuneration, plus 5% interest as from the due dates, broken down as follows:

        (i) EUR 16,000 net as the guaranteed payment due on 31 October 2021;
        (ii) EUR 36,000 net as the salary of November 2021;
        (iii) EUR 36,000 net as the salary December 2021;
        (iv) EUR 36,000 net as the salary of January 2022; and
        (v) EUR 36,000 net as the salary of February 2022.

    b. TRY 59,810.78 net as reimbursement of the flight tickets for the player and his family, plus interest as from the date of payment; and

    c. EUR 108,000 as compensation for breach of contract, corresponding to the residual value of the employment contract, plus interest as from the due date.

13. In addition, the club requested sporting sanctions to be imposed on the club under art. 12bis and 17, par. 4 of the FIFA RSTP.

b. Reply of the club

14. On 7 June 2022, the club filed its reply to the player's claim.

15. In its reply, the club initially stressed that the player should only be entitled to EUR 44,800 (*pro rata*) as advance payment because he prematurely terminated the employment contract before the end of the pertinent season.

16. Thereafter, the club pointed out that the amount of EUR 160,258.96 had already been delivered to the player, entailing that only EUR 136,541.04 would be due. Moreover, the club claimed that such amount should still be reduced by EUR 1,329.57 corresponding to the car expenses of an accident in which the player was involved, and which were allegedly paid by the club on his behalf – arising at a total debt of EUR 136,541.04.

17. The club furthermore disputed the player's allegations as to the flight tickets. In this respect, it alleged that the player had never requested the club to issue the tickets, nor it had approved any reimbursement. Additionally, the club underlined that they should only be payable to the player himself (and not for his family).

18. Finally, as to the compensation for breach of contract, the club argued that FIFA should wait until the end of the European transfer window to allow the player to mitigate his damages.

19. The requests for relief of the club were the following, in quoted *verbatim*:

    "- to dismiss the claim of the Claimant

    - to deduct the attached payment amounts from the claimed receivables of the Claimant and decide the overdue receivables of the Claimant as 135.2111,47 -Euro

    - to dismiss the claim of the Claimant in regards to the flight tickets

    - to dismiss the claims of the Claimant in regards to the compensation

    - to wait until the end of the summer transfer window for the 2022/2023 football season under any circumstances as the contractual amounts must be deducted from the total compensation amount which will be calculated by the FIFA DRC if Claimant signs an employment contract with another team during the summer transfer window

    - to make a decision that the judicial costs and the attorneyship fees that the Respondent is faced with shall be paid by the Claimant".

c. Additional comments of the player

20. On 23 June 2022, the player filed specific comments on the proofs of payment submitted by the club together with its reply.

21. The player acknowledged receipt of the following amounts paid in Euros (EUR) but informed that they were already included in his calculation:

    a. EUR 50,000 on 16 July 2021;

b. EUR 30,000 on 26 October 2021;
c. EUR 42,000 on 2 December 2021; and
d. EUR 36,000 on 10 January 2022.

22. In parallel, the player denied having received the payments allegedly made by the club in Turkish Lira (TRY), indicated by the club as follows:

a. TRY 13,500 on 4 March 2022; and
b. TRY 22,500 on 14 March 2022.

23. In this regard, the player mentioned that payments should be made exclusively in Euros.

24. In addition to the above, the player strongly denied having suffered a car accidence and pointed out that the invoice filed by the club together with its reply "*does not prove (i) what accident was that and when it allegedly took place or (ii) that the Club actually paid the relevant invoice or had any expenses on behalf of the player*".

25. Alternatively, the player highlighted that even if the club's allegations were to be upheld, the sum of all the invoices filed by the player amounted to EUR 161,550.77, therefore there would would still be a balance in his favour of EUR 2,449.23.

26. In conclusion, the player recalled his requests for relief as per the statement of claim.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

27. 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 28 April 2022 and submitted for decision on 21 July 2022. Taking into account the wording of art. 34 of the June 2022 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.

28. 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, par. 1, lit. b) of the Regulations on the Status and Transfer of Players (July 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 an Brazilian player and a Turkish club.

29. 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 (July 2022 edition), and considering that the present claim was lodged on 28 April 2022, the March 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

30. 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

31. 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

32. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that it pertains to a claim for outstanding remuneration, compensation for breach of contract and reimbursement of flight tickets lodged by the player against the club in connection to the employment relationship previously maintained between them.

33. The player terminated the employment contract on 21 March 2022 due to overdue payables and claimed to have just cause in line with art. 14bis of the Regulations. The club, on the other hand, did not dispute that it gave cause to the termination but challenged the *quantum* due to the player, bearing in mind: *(i)* the reduction of the advance payment; *(ii)* proof of payments allegedly made to the player; *(iii)* expenses allegedly incurred on his behalf because of a car accident; *(iv)* its liability to reimburse flight tickets; and *(v)* the possibility of a mitigated compensation.

34. Against this background and by recalling the content of art. 14bis of the Regulations, the DRC confirmed that at the time the default notices were sent, and the employment

contract was terminated by the player, more than two of his salaries were undisputedly outstanding. In addition, the player put the club in default twice and granted it with a reasonable deadline (15 plus 5 days) to cure the breach, to no avail.

35. Therefore, the DRC decided that the Claimant had a just cause to unilaterally terminate the employment contract in line with art. 14bis of the Regulations. The Chamber then considered that its task was limited to address the consequences of such termination, as follows.

ii. Consequences

36. 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.

(A) Outstanding remuneration

37. The DRC continued its deliberations by addressing the club's argumentation as to the advance payment. In particular, the Chamber noted that the club argued that the advance payment stipulated in the employment contract should be proportionally reduced taking into consideration that it was prematurely termination.

38. In this respect, the DRC was firm to determine that the club's allegation could not succeed because: *(i)* there is no contractual basis in this regard; and *(ii)* the club undisputedly gave cause to the termination, hence the burden could not be attributable to the player. Therefore, the DRC concluded that the player should be entitled to the entire advance payment as stipulated in the employment contract, and the club position should be set aside.

39. Subsequently, the Chamber turned its attention to the proofs of payment submitted by the club together with its reply, as well as the parties' allegations on this specific matter. At this point, the Chamber noted that the player requested to be awarded the total amount of EUR 160,000 net corresponding to the guaranteed payment of 21 October 2021, and the salaries from November 2021 until February 2022. Furthermore, the DRC was also observant that the club provided proofs of payment of EUR 158,000 plus TRY 36,000.

40. As to the amounts in EUR, the Chamber stressed that the club bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. Nevertheless, the DRC deemed that the club could not demonstrate that the proofs of payment on file corresponded to any of the outstanding remuneration sought by the player. On the contrary, the DRC highlighted that the bank documentation is not

specified, and the club also did not provide any clarification in its reply. As such, the Chamber determined that the club's argumentation should be set aside.

41. As to the amounts in TRY, on the other hand, the Chamber was mindful that the player disputed the receipt but limited himself to argue that the payments should not be taken into consideration because they were not delivered in EUR, as stipulated in the employment contract.

42. Against this background, the DRC outlined that: *(i)* the proofs of payment in TRY are alike the ones submitted in EUR – which the player acknowledged having received; *(ii)* the employment contract does not prevent the club from making any payments in national currency, obviously provided that such payments are equivalent to the amounts guaranteed in EUR; and *(iii)* the player did not provide any counterevidence or specific allegation in support of his thesis.

43. As a consequence, the Chamber decided that this specific part of the club's position should be upheld. It followed that the amounts paid in TRY should be deducted from the outstanding remuneration sought by the player, taking the exchange rate for the date of each payment performed into consideration (*i.e.* EUR 862.33 on 4 March 2022 and EUR 1,389.48 on 14 March 2022).

44. Finally, the DRC moved to the issue of the car accident. In this regard, the Chamber concurred that – as opposed to the argumentation of the club – the invoice provided together with its reply was not sufficient to establish the relevant facts, let alone the player's liability to cover the expenses.

45. Along the same lines, the DRC founded it decisive that there was not on file: *(i)* any proof of consent of the player with the expenses incurred; and *(ii)* any proof of payment by the club of the amount invoiced. Therefore, the Chamber concluded that no amounts should be deducted on this concept and the club's allegations should be dismissed.

46. Having established the above and by way of conclusion, the DRC decided that the player should be entitled to the following amount, on the basis of the general legal principle of *pacta sunt servanda*:

    a. EUR 13,748.19 as the guaranteed payment due by 21 October 2021 (EUR 16,000) minus the payments performed in March (TRY 36,000 = EUR 2,251.81);

    b. EUR 36,000 net as the salary of November 2021;

    c. EUR 36,000 net as the salary December 2021;

    d. EUR 36,000 net as the salary of January 2022; and

e. EUR 36,000 net as the salary of February 2022.

47. 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 the respective due dates until the date of effective payment.

(B) Reimbursement for the flight tickets

48. Subsequently, the DRC turned to the player's request for reimbursement of flight tickets.

49. In doing so, the Chamber firstly recalled the wording of the last topic of clause 6.2 of the employment contract, which reads as follows: "*the club shall provide the player 4 (four) round-trip flight tickets to his country, Giresun – Sao Paulo per season* ***for the use of the player himself***" (emphasis added).

50. With the above in mind, the DRC considered that: *(i)* the club did not prove that all the relevant flight tickets had already been provided to the player; and *(ii)* in any event, in accordance with the jurisprudence of the Football Tribunal, the player's right to return home in case of a termination with just cause shall be protected.

51. Consequently, the Chamber determined that the player should be entitled to the reimbursement of his flight ticket. Nevertheless, the DRC considered that it was not in a position to grant the reimbursement of the flight tickets issued on behalf of the player's wife and daughter because they lacked contractual basis – because the relevant contractual clause determined that the flight tickets were to be used by the player himself, and nobody else. Consequently, the members of the Chamber concluded that the amount requested by the player should be calculated *pro rata* and divided by three (*i.e.* TRY 19,936.92).

52. For the sake of completeness and as opposed to the club's position, the DRC wished to remark that the fact that the player was the one to issue the flight tickets instead of the club itself was not relevant *vis-à-vis* the factual framework and the breach of contract by the club.

53. Lastly, the Chamber decided that the sum should be granted in TRY (as indicated in the proof of payment). Moreover, the latter decided to award the player interest at the rate of 5% *p.a.* on the outstanding amounts as from the date of payment (*i.e.* 18 March 2022) until the date of effective payment.

(C) Compensation for breach of contract

54. 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.

55. 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.

56. 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.

57. 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 108,000 net (*i.e.* the salaries of March, April, and May 2022) serves as the basis for the determination of the amount of compensation for breach of contract.

58. 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.

59. Indeed, the player informed that he remained unemployed after the termination of the employment contract, therefore was not able to mitigate his damages. Likewise, the

Chamber confirmed that no additional compensation could be granted in the case at hand (cf. art. 17, par. 1, (ii) of the Regulations).

60. 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 108,000 net to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

61. At this point, the DRC stressed that the club's request to suspend the proceedings in order to enable the player to mitigate his damages lacked regulatory basis. Additionally, the Chamber outlined that on 30 June 2022 (*i.e.* after the natural end of the employment contract) the player informed that he remained unemployed following the termination, therefore no different outcome would be reached in the case *sub judice*.

62. 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 the date of the claim (*i.e.* 28 April 2022) until the date of effective payment.

iii. Compliance with monetary decisions

63. 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.

64. 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.

65. 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.

66. 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.

67. 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

68. 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.

69. 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.

70. 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, Douglas Silva Bacelar, is partially accepted.

2. The Respondent, Giresunspor, has to pay to the Claimant, the following amount(s):

   - EUR 13,748.19 net as outstanding remuneration plus 5% interest *p.a.* as from 1 November 2021 until the date of effective payment;

   - EUR 36,000 net as outstanding remuneration plus 5% interest *p.a.* as from 1 December 2021 until the date of effective payment;

   - EUR 36,000 net as outstanding remuneration plus 5% interest *p.a.* as from 1 January 2022 until the date of effective payment;

   - EUR 36,000 net as outstanding remuneration plus 5% interest *p.a.* as from 1 February 2022 until the date of effective payment;

   - EUR 36,000 net as outstanding remuneration plus 5% interest *p.a.* as from 1 March 2022 until the date of effective payment;

   - TRY 19,936.92 net as outstanding remuneration plus 5% interest *p.a.* as from 18 March 2022 until the date of effective payment; and

   - EUR 108,000 net as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 28 April 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, 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

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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