

Decision of the Dispute Resolution Chamber

passed on 21 July 2022

regarding an employment-related dispute concerning the player Nouha Dicko

BY:

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

CLAIMANT:

Nouha Dicko, France

RESPONDENT:

Yeni Malatyaspor, Turkey

I Facts

1. On 13 January 2022, the parties concluded an employment contract valid as from the date of signature until 31 May 2022. The contract further stipulated in this respect that, *“in the case of club stay in Super League at the end of 2021/2022 season, contract will be extended for one more season which is end 31th May 2023.”* (the “optional season”).
2. According to the contract, the player was entitled to a total remuneration of EUR 453,500 net for the season 2021/2022, payable as follows:

| | |
|------------|--------------|
| 20.01.2022 | 75.000.-EUR |
| 30.01.2022 | 75.000.-EUR |
| 15.02.2022 | 60.700.-EUR |
| 29.02.2022 | 60.700.-EUR |
| 30.03.2022 | 60.700.-EUR |
| 30.04.2022 | 60.700.-EUR |
| 30.05.2022 | 60.700.-EUR |
| TOTAL | 453.500.-EUR |

3. In relation to the extended contract, the contract stipulated a remuneration of EUR 607,000 EUR net for the season 2022/2023, detailed as follows:

| | |
|------------|--------------|
| 30.08.2022 | 60.700.-EUR |
| 30.09.2022 | 60.700.-EUR |
| 30.10.2022 | 60.700.-EUR |
| 31.11.2022 | 60.700.-EUR |
| 30.12.2022 | 60.700.-EUR |
| 30.01.2023 | 60.700.-EUR |
| 28.02.2023 | 60.700.-EUR |
| 30.03.2023 | 60.700.-EUR |
| 30.04.2023 | 60.700.-EUR |
| 30.05.2023 | 60.700.-EUR |
| TOTAL | 607.000.-EUR |

4. Art. 17 of the contract stipulated the following:
“The parties agreed on a compensation for breach of contract payable by the party in breach to the prejudiced party. The compensation clause provides that the party in breach shall pay to the other party an amount of EUR 20,000 as compensation for the early termination of the contract.”
5. On 21 April 2022, in the matter FPSD-5494 and opposing the same parties, the Dispute Resolution Chamber decided upon the following:
*“ 2. The Respondent, Yeni Malatyaspor, has to pay to the Claimant, the outstanding amount of EUR 271,400 plus interest as follows:
- 5% interest p.a. over the amount of EUR 75,000 as from 21 January 2022 until the date of effective payment;
- 5% interest p.a. over the amount of EUR 75,000 as from 1 February 2022 until the date of effective payment;
- 5% interest p.a. over the amount of EUR 60,700 as from 16 February 2022 until the date of effective payment;
- 5% interest p.a. over the amount of EUR 60,700 as from 1 March 2022 until the date of effective payment;”*

6. On 4 April 2022, the player sent a default notice referring to art. 14 bis of the regulations, by means of which he requested the payment of an outstanding amount of EUR 332,100 (i.e. EUR 271,400 already pending in FPSD-54940 and EUR 60,700 due on 30 March 2022) within 15 days.
7. On 11 May 2022, the player sent a **termination letter** while referring to his previous correspondence.,
8. On 12 May 2022, the Turkish Football Federation confirmed that the termination was entered into its records.
9. On 31 May 2022, lodged a claim before FIFA for breach of contract without just cause and requested the payment of a total amount of EUR 469,688.70, plus 5% interest p.a., detailed as follows:
 - **EUR 142,938,70 as outstanding remuneration**, corresponding to the salaries of March 60.700 EUR, April (EUR 60.700) and part of May until 11/05/2022, i.e. EUR 21.538,70),
 - **EUR 226,750 as compensation** for breach of the contract by the Club,
 - **EUR 100,000** as “non-pecuniary damages caused by the Club”. In this regard, the player explained that he *“is experiencing serious deep sadness and insecurity problems”*.
10. In its reply to the claim, the club acknowledged that “due to the financial difficulties of the club, payments could not be made on time.”
11. However, the club explained that in accordance with art. 17 of the contract, the maximum amount of compensation to be obtained by the parties is determined as EUR 20,000.

II Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *the Chamber*) 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 31 May 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.
2. Subsequently, the Chamber referred to art. 2 par. 1 and art. 24 par. 1 lit. a) 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 (June 2022 edition), it 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 Turkish club.
3. 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 31 May 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

4. 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

5. 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

6. The Chamber first noted that, on 13 January 2022, the parties concluded an employment contract valid as from the date of signature until 31 May 2022 and with the economic conditions that are quoted in point I. 2 above.

7. Subsequently, the Chamber took note of the fact that the player lodged a claim before FIFA arguing that, after having put the club in default, he terminated the contract on 11 May 2022 due to the existence of outstanding salaries since March 2022.
8. On this note, the Chamber also noted that, in the matter FPSD-5494, it already decided on 21 April 2022 that club already owed the amount of EUR 271,400 as outstanding remuneration for amounts already due since 20 January 2022.
9. On the other hand, the Chamber took note of the position of the Respondent, and observed that the latter fundamentally acknowledged the claim as it argued that *“due to the financial difficulties of the club, payments could not be made on time.”*
10. In view of the above, the Chamber noted that (1) it appears that the club failed to pay the amounts due on 30 March 2022 and 30 April 2022 and that (2), from the matter FPSD-5494, it also appears that the club had a substantial debt towards the player.
11. As a result, the Chamber established that the club seriously neglected its financial obligations towards the player as per the contract, and therefore decided that the player terminated the contract with just cause on 11 May 2022.

ii. Consequences

12. Having stated the above, the members of the Chamber turned its attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
13. Before entering into the calculation of the payable compensation, the Chamber noted that the player is entitled to his outstanding dues until the date of termination of the contract.
14. In particular, while noting the amounts that were already awarded in the matter FPSD-5494, the Chamber observed that, from the evidence on file, the following amounts appear to be outstanding:
 - March (due on 30 March 2022): EUR 60.700,
 - April (due on 30 April 2022): EUR 60.700,
 - May (EUR 60,700, due on 30 May 2022, but pro rata is due until the date of termination of the contract i.e. USD 21,580.70
 - Total: EUR 142,980.70
15. The Chamber thus confirmed that the financial obligations deemed as outstanding in the present case correspond to EUR 142,980.70.
16. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay to the Claimant the amounts claimed as outstanding under the contract, in total EUR 142,980.70, as detailed above.
17. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from the due dates until the date of effective payment.

18. 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.
19. In application of the relevant provision, the Chamber held that it first of all had to clarify 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.
20. In this regard, the Chamber took note of the wording of clause 17 of the contract, which established that *"The parties agreed on a compensation for breach of contract payable by the party in breach to the prejudiced party. The compensation clause in provides that the party in breach shall pay to the other party an amount of EUR 20,000 as compensation for the early termination of the contract."*
21. After analysing the content of the aforementioned clause, the Chamber concluded that it fulfilled the criteria of reciprocity and proportionality, in line with the Chamber's longstanding jurisprudence, and therefore was to be applied in the case at hand to determine the amount of compensation payable by the Respondent to the Claimant.
22. Consequently, the Chamber decided that the amount of EUR 20,000, as per the compensation clause agreed between the parties in the contract, is due to the player by the club.
23. Lastly, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest on said compensation at the rate of 5% p.a. as of the date of claim until the date of effective payment.

iii. Compliance with monetary decisions

24. In continuation, the Chamber focused on the further consequences of the breach of contract in question and, in this respect, it addressed the question of sporting sanctions against the club in accordance with art. 17 par. 4 of the Regulations. The cited provision stipulates that, in addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract during the protected period.
25. In this respect, the Chamber referred to item 7 of the "Definitions" section of the Regulations, which stipulates *inter alia* that the protected period shall last *"for three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional"*.

26. In this respect, the Chamber took note that the player was born on 14 May 1992 and the relevant contract with the club was concluded on 13 January 2022. Furthermore, the Chamber noted that the player terminated the contract without just cause on 11 May 2022, i.e. only 5 months after its conclusion. The breach of contract by the club had therefore occurred within the protected period.
27. Furthermore, the Chamber noted that the club had already been held liable of breaching other employment contracts without just cause in recent occasions, in particular in case such as 20-01115 (decided on 18 May 2021), FPSD-5125 (decided on 5 April 2022), FPSD-5123 (decided on 5 April 2022), FPSD-5224 (decided on 5 April 2022) and FPSD-5688 (decided on 21 July 2022).
28. Consequently, the Chamber decided that, by virtue of art. 17 par. 4 of the Regulations, the club shall be sanctioned with a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The sanction shall enter into force as from the next registration period.

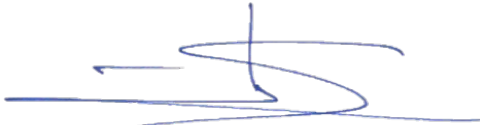
d. Costs

29. 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.
30. Furthermore, 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.
31. Lastly, the Chamber concluded its deliberations by rejecting any other requests for relief made by any of the parties.

III Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Nouha Dicko, is accepted.
2. The Respondent, Yeni Malatyaspor, has to pay to the Claimant, the following amounts:
 - **EUR 142,980.70 as outstanding remuneration plus** interest as follows:
 - 5% interest p.a. over the amount of EUR 60,700 as from 1 April 2022 until the date of effective payment;
 - 5% interest p.a. over the amount of EUR 60,700 as from 1 May 2022 until the date of effective payment;
 - 5% interest p.a. over the amount of EUR 21,580.70 as from 1 June 2022 until the date of effective payment.
 - **EUR 20,000 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 31 May 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. **The club is sanctioned with a ban from registering any new players**, either nationally or internationally, for two entire and consecutive registration periods (art. 17 par. 4 of the Regulations). The sanction will enter into force as from the next registration period.
6. 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 present matter shall be submitted, upon request, to the FIFA Disciplinary Committee
7. 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.

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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