

Decision of the Dispute Resolution Chamber

passed on 21 July 2022

regarding an employment-related dispute concerning the player Pablo Renan Dos Santos

BY:

Frans de Weger (the Netherlands), Chairperson
Roy Vermeer (the Netherlands), member
Alejandro Atilio Taraborelli (Argentina & Italy), member

CLAIMANT:

Pablo Renan dos Santos, Brazil
Represented by Mr Jose Rebelo da Silva

RESPONDENT:

Hatayspor Kulübü Derneği, Turkey
Represented by Mr Ismail Coşkun

I. Facts of the case

1. On 17 August 2022, the Portuguese club Sporting Clube de Braga and the Turkish club, Hatayspor Kulübü Derneği (hereinafter: *the Respondent*) signed a loan agreement (hereinafter: *the Contract*) for the Brazilian player, Pablo Renan dos Santos (hereinafter: *the Claimant*). Said Contract
2. In accordance with article 1 of the Contract, the Claimant, the Respondent and Sporting Clube de Braga were all specified as parties to the Contract.
3. In accordance with article 2 of the Contract, it was agreed that the Claimant would play for the Respondent as from the date of signature until 31 May 2021.
4. Furthermore, in accordance with article 3 of the Contract, the Respondent undertook to pay to the Claimant *inter alia* a total remuneration of EUR 324,000, payable in nine instalments of EUR 30,000 as from August 2020 until May 2021, each due on the last day of each respective month, and one instalment of EUR 54,000, due on 2 November 2020.
5. By correspondence dated 29 April 2022, the Claimant put the Respondent in default of payment of EUR 30,000, corresponding to the final instalment under the Contract which had fallen due on 31 May 2021, setting a time limit expiring on 9 May 2022 in order to remedy the default.

II. Proceedings before FIFA

6. On 26 May 2022, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant

7. According to the Claimant, the Respondent failed to comply with its financial obligations under the Contract by not paying the final instalment thereunder, in the amount of EUR 30,000.
8. The Claimant argued that, in accordance with the general legal principle of *pacta sunt servanda*, the outstanding amounts must be paid by the Respondent.
9. The Claimant requested payment of said amounts, with the application of interest at the standard rate of 5% *p.a.* as from 31 May 2021 until the date of effective payment.
10. Furthermore, the Claimant requested the imposition of sporting sanctions on the Respondent.

11. Lastly, the Claimant requested that any legal or procedural costs arising from the proceedings at hand shall be borne by the Respondent.

b. Position of the Respondent

12. In its response to the claim, the Respondent briefly acknowledged he unpaid amounts, justifying said non-payment with the economic situation in Turkey and, in particular, the depreciation of the local currency, the Turkish Lira.
13. The Respondent, therefore, only requested a reduction of the amounts payable.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

14. 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 26 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.
15. 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 (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 a Brazilian player and a Turkish club.
16. 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 26 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

17. 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

18. 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

19. 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 the lawfulness of the non-payment of certain financial obligations under the Contract, namely EUR 30,000, corresponding to the final instalment under the Contract, which had fallen due on 31 May 2021.
20. In this context, the Chamber noted that neither party contested the non-payment of the amounts claimed by the Claimant. Therefore, it acknowledged that its task was to determine, based on the arguments presented by the parties, whether the Respondent had a valid justification for not having complied with its financial obligations.
21. The Chamber took note of the Respondent's argumentation that the salaries owed to the Claimant remained unpaid due to financial difficulties caused by the poor economic situation in Turkey, and, in particular, the depreciation of the Turkish Lira.
22. In this respect, the Chamber wished to point out that the Respondent failed to submit any evidence corroborating the assertion that the Turkish Lira had indeed depreciated as claimed, thereby failing to meet the burden of proving that the payments under the Contract could be challenged.
23. Consequently, the Chamber concluded that, as no situation of force majeure could be established in the present matter, the Respondent has to comply with the contractually agreed payments as stipulated per the Contract.
24. In view of the foregoing, and bearing in mind the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in

good faith, the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the Contract concluded between the parties, namely EUR 30,000.

ii. Consequences

25. 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 Respondent.
26. In this respect, the Chamber recalled that the amount claimed by the Claimant, i.e. EUR 30,000, corresponding to the final instalment under the Contract, remained uncontested by the Respondent.
27. 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 the Claimant the amounts claimed as outstanding under the Contract, in total EUR 30,000, as detailed above
28. In addition, taking into account 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.* as from 1 June 2021, i.e. the day unpaid instalment became overdue, until the date of effective payment.

iii. Art. 12bis of the Regulations

29. In continuation, the Chamber referred art. 12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
30. To this end, the Chamber confirmed that the Claimant put the Respondent in default of payment of the amounts sought, that those amounts had fallen due more than 30 days beforehand, and that a deadline of 10 days was granted to the Respondent to cure such breach.
31. Accordingly, the Chamber confirmed that the club had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations were met in the case at hand.
32. The Chamber further established that, by virtue of art. 12bis par. 4 of the Regulations, it had the competence to impose sanctions on the Respondent. On account of the above and bearing in mind that this was the third offence committed by the Respondent within the last two years (20-00978, passed on 6 October 2020; 20-01696, passed on

9 February 2021), the Chamber decided to impose a fine in the amount of USD 5,000 on the former, in accordance with art. 12bis par. 4 lit. c) of the Regulations.

33. In this connection, the Chamber highlighted that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

iv. Compliance with monetary decisions

34. 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.
35. 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.
36. Therefore, bearing in mind the above, the DRC decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, 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 Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
37. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
38. 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

39. 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.

40. 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.
41. 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, Pablo Renan Dos Santos, is partially accepted.
2. The Respondent, Hatayspor Kulübü Derneği, has to pay to the Claimant the following amount:
 - EUR 30,000 as outstanding remuneration plus 5% *p.a.* as from 1 June 2021 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. The Respondent is ordered to pay a fine of USD 5,000 to FIFA **within 30 days** as from the notification of this decision to the following bank account, with clear reference to the case FPSD-6184:

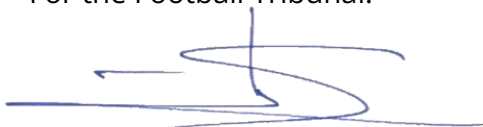
UBS Zurich
Account number 230-366677.61N (FIFA Players' Status)
Clearing number 230
IBAN: CH12 0023 0230 3666 7761 N
SWIFT: UBSWCHZH80A
Please mention the applicable reference number

5. Full payment of the amounts mentioned in point 2. (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.
6. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players if full payment of the amounts mentioned in point 2. (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.

7. 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.

8. 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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