

Decision of the Dispute Resolution Chamber

passed on 21 July 2022

regarding an employment-related dispute concerning the player Oussama Hadadi

BY:

Frans de Weger (the Netherlands), Chairperson

Roy Vermeer (the Netherlands), member

Alejandro Atilio Taraborelli (Argentina & Italy), member

CLAIMANT / COUNTER-RESPONDENT 1:

Oussama Hadadi, Tunisia

Represented by Global Sport Consulting

RESPONDENT / COUNTER-CLAIMANT:

Yeni Malatyaspor, Turkey

Represented by Mr Burak Çakir

COUNTER-RESPONDENT 2:

SpVgg Greuther Fürth, Germany

I. Facts of the case

1. On 14 July 2021, the Tunisian player, Oussama Hadadi (hereinafter: *the Player*), and the Turkish club, Yeni Malatyaspor (hereinafter: *the Club*) signed an employment contract (hereinafter: *the Contract*) valid as from the date of signature until 31 May 2023.
2. In accordance with Article 3 of the Contract, the Club undertook to pay to the Player *inter alia* an annual salary of EUR 800,000, payable in ten equal monthly instalments of EUR 80,000 by no later than the 30th day of each month from August to May every season, as well as a seasonal bonus of EUR 60,000 payable on 15 September 2021 and 15 September 2022 respectively.
3. Furthermore, in accordance with Article 9 of the Contract, the Player and the Club agreed as follows:

“Disputes that may arise between the parties cannot be resolved exclusively by the FIFA Dispute Resolution Board (DRC). Final Decision of FIFA, within 21 days from the date of the decision, before the Court of Arbitration of Sports (CAS) can be appealed. All proceedings before the CAS will be conducted in English.”
4. By correspondence dated 7 January 2022, the Player put the Club in default of payment of EUR 300,000, setting a time limit expiring on 22 January 2022 in order to remedy the default.
5. By correspondence dated 25 January 2022, the Player unilaterally terminated the Contract with the Club.
6. Following a conference call (date not specified) between the Player and the President of the Club, the former agreed to withdraw his notification of termination with the condition that the Club shall pay outstanding amounts until 1 March 2022.
7. By correspondence dated 15 March 2022, the Player put the Club in default of payment of EUR 460,000, setting a time limit expiring on 30 March 2022 in order to remedy the default.
8. By correspondence dated 5 April 2022, the Player unilaterally terminated the Contract with the Club.
9. On 14 June 2022, the Player and the German club, SpVgg Greuther Fürth (hereinafter: *the New Club*) signed an employment contract (hereinafter: *the New Contract*) valid as from 1 July 2022 until 30 June 2024.

10. In accordance with the New Contract, the New Club undertook to pay the Player a net monthly remuneration of EUR 14,997.46 over the course of the New Contract.

II. Proceedings before FIFA

11. On 6 April 2022, the Player filed the claim at hand before FIFA.
12. Furthermore, on 25 May 2022, the Club lodged a counterclaim against the Player before FIFA.
13. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Player

14. According to the Player, the Club failed to pay him several salary instalments, more specifically in the period between October 2021 and March 2022, as well as the signing bonus which fell due on 15 September 2021.
15. Furthermore, the Player asserted having complied with the prerequisites of art. 14bis of the Regulations on the Status and Transfer of Players by putting the Club in default of the respective outstanding amounts and granting it a 15-day deadline to remedy the default.
16. As such, the Player argued that he terminated the Contract with just cause, and that as a result, he is entitled to the outstanding amounts under the Contract, as well as compensation by the Club on account of such unlawful breach by the latter.
17. The Player requested outstanding remuneration in the amount of EUR 540,000 plus interest of 5% *p.a.* as from the due dates of the respective instalments until the date of effective payment.
18. Moreover, the Player requested compensation due to breach of contract without just cause by the Club in the amount of EUR 1,500,000, corresponding to the residual value of the Contract in the amount of EUR 1,020,000 as from 5 April 2022, the “second termination” date, plus additional compensation in the amount of EUR 480,000, corresponding to six monthly salaries as a result of the egregious nature of the Club’s conduct.
19. Lastly, the Player requested interest on any compensation awarded at the standard rate of 5% *p.a.* as from 5 April 2022 until the date of effective payment.

b. Position of the Club

20. In its counterclaim, the Club asserted that it never received the default letters dated 7 January 2022 and 15 March 2022 and that, as a result, it was never granted the requisite 15-day deadline by the Player, rendering the unilateral termination of the Contract by the Player without just cause.
21. Moreover, the Club submitted several payment receipts towards the Player, which were, however, not accompanied by any comments or explanation as to how this would affect the claim of the Player.
22. As a result, the Club requested compensation in the amount of EUR 1,020,000 as a result of the termination by the Player occurring without just cause, corresponding to the residual value of the Contract as from 5 April 2022.

c. Position of the Player regarding the counterclaim of the Club

23. The Player rejected the counterclaim lodged by the Club entirely, arguing as follows:
24. With regards to the allegation that the Club received no default notices by the Player, the latter argued that he sent all his correspondence, including the disputed default notices, to the official e-mail address of the Club which was stipulated in Article 12 of the Contract: "*info@yenimalatyaspor.org*". The Player further stated that he submitted evidence in this respect that clearly evidences the aforementioned assertion. As such, the Player argued that the formal requirements of art. 14bis of the Regulations were formally met.
25. Furthermore, the Player argued that the proofs of payment submitted the Club were authentic, however, they were not sufficient in undermining the fact that there were far more than two monthly salaries outstanding at the time the Contract was terminated, thereby maintaining that the Contract was terminated with just cause.

d. Position of the New Club regarding the counterclaim of the Club

26. The New Club submitted that it is clear that the Player terminated the Contract with just cause, in line with art. 14bis of the Regulations and that, as a result, it cannot be held jointly and severally liable for compensation sought via the counterclaim lodged by the Club.

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 6 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 a Tunisian player and a Turkish club.
29. Furthermore, in accordance with art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players (July 2022) edition, the Chamber observed that the Contract between the Player and the Club did not contain a provision by way of which the parties to said Contract explicitly opted for the dispute to be decided by another decision-making body than the DRC.
30. 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), and considering that the present claim was lodged on 6 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

31. 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

32. 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

33. 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 justice of the early termination of the Contract by the Player, based on the alleged non-payment of certain financial obligations by the Club as per the Contract, in accordance with art. 14bis of the Regulations.

34. In this context, the Chamber acknowledged that its task was to determine, based on the evidence presented by the parties, whether the claimed amounts had in fact remained unpaid by the Club and, if so, whether the formal pre-requisites of art. 14bis of the Regulations had in fact been fulfilled.

35. The Chamber then referred to the wording of art. 14bis par. 1 of the Regulations, in accordance with which, if a club unlawfully fails to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s).

36. The Chamber noted that the Player claims not having received his remuneration corresponding to the period between October 2021 and March 2022. Furthermore, the Chamber noted that the Player has provided written evidence of having put the Club in default on 7 January 2022, i.e. at least 15 days before unilaterally terminating the Contract on 25 January 2022.

37. On one hand, the Chamber took note of the allegation submitted by the Club that the default notices allegedly sent by the Player were never received by the former. In this respect, the Chamber established that the Player had provided sufficient evidence regarding the service of the respective default notices, by including not only the letters themselves, but also information regarding the dates and the e-mail addresses to which said letters were sent, which indeed corresponded with the official address of the Club stipulated under art. 12 of the Contract. Moreover, and for the sake of completeness, the

Chamber noted that said e-mail address corresponded to the official e-mail address of the Club entered into TMS.

38. Furthermore, as neither the Player, nor the Club provided evidence of the latter accepting the withdrawal of the termination notice issued by the former, the Chamber considered that the actual date of termination of the Contract by the Player was 25 January 2022, and that both the default notice and termination letter sent subsequently on 15 March 2022 and 5 April 2022 respectively were without any effect.
39. The Chamber also noted that in the case at hand the Club bore the burden of proving that it indeed complied with the financial terms of the Contract concluded between the parties. Nonetheless, the evidence provided by the Club (namely the payment receipts submitted as part of the counterclaim) were related to amounts which were not in dispute, and therefore, did not prove beyond doubt payment of any of the amounts claimed as outstanding by the Player.
40. In view of the aforementioned, the Chamber was able to establish that, at the time the Player terminated the Contract, the Club had failed to pay remuneration under the Contract in the amount of EUR 300,000, corresponding to three monthly salaries of EUR 80,000 each, as well as the signing bonus of EUR 60,000 which was payable on 15 September 2021.
41. Thus, the Chamber concluded that the Player had a just cause to unilaterally terminate the Contract, based on art. 14bis of the Regulations.

ii. Consequences

42. 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.
43. 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 three salaries of EUR 80,000 under the Contract, for the period between October 2021 and December 2021, as well as the signing bonus of EUR 60,000, amounting to EUR 300,000.
44. 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 300,000.

45. 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 on the outstanding amounts as follows:
- 5% *p.a.* as from 16 September 2021 until the date of effective payment, payable on the amount of EUR 60,000;
 - 5% *p.a.* as from 31 October 2021 until the date of effective payment, payable on the amount of EUR 80,000;
 - 5% *p.a.* as from 1 December 2021 until the date of effective payment, payable on the amount of EUR 80,000;
 - 5% *p.a.* as from 31 December 2021 until the date of effective payment, payable on the amount of EUR 80,000.
46. 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.
47. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the Contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the Player or the Club in the event of breach of contract.
48. In this regard, the Chamber established that no such compensation clause was included in the Contract.
49. As a consequence, 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.
50. 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 until its term. Consequently, the Chamber concluded that the amount of EUR 1,260,000 (i.e. EUR 400,000 for the remainder of the 2021-2022 season, or 5 times EUR 80,000 for the period between January 2022 plus May 2022 plus EUR 860,000 for the

2022/2023 season, corresponding to 10 monthly salaries of EUR 80,000 each and the contractually stipulated seasonal “down payment” of EUR 60,000, payable on 15 September 2022) serves as the basis for the determination of the amount of compensation for breach of contract.

51. In continuation, the Chamber verified 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 Chamber 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.
52. Indeed, the Player found new employment with New Club. In accordance with the New Contract, the Player was entitled to EUR 14,997.46 per month. Furthermore, the Chamber noted that the Contract and the New Contract, overlapped during the period of June 2022 until May 2023. Therefore, the Chamber concluded that the Player mitigated his damages in the total amount of EUR 179,969.52, that is, 12 times EUR 14,997.54.
53. 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, or six monthly salaries in the presence of egregious circumstances, should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the Contract termination took place due to said reason, i.e. overdue payables by the Club, and therefore decided that the Player shall receive additional compensation.
54. Furthermore, the Chamber established that, in line with its longstanding jurisprudence, there were no egregious circumstances in the present case.
55. In view of the foregoing, the Chamber decided to award the amount of additional compensation of EUR 240,000, i.e. three times EUR 80,000, as the monthly remuneration to the Player.
56. The Chamber reminded the parties that, as per the last sentence of art. 17 par. 1 lit. ii. of the Regulations, the overall compensation may never exceed the rest value of the prematurely terminated Contract.
57. Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Club must pay the net amount of EUR 1,260,000 to the Player (i.e. EUR 1,260,000 minus EUR 179,969.52 plus EUR 240,000, limited to a maximum of EUR 179,969.52), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

58. 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 6 April 2022, i.e. the date the claim was lodged, until the date of effective payment.

iii. Compliance with monetary decisions

59. 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.

60. 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.

61. 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.

62. 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.

63. 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

64. 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.

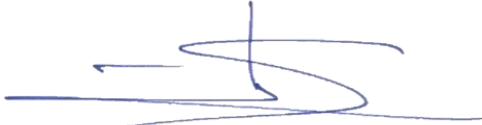
65. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
66. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant/Counter-Respondent 1, Oussama Hadadi, is admissible.
2. The Claim of the Claimant/Counter-Respondent 1 is partially accepted.
3. The Respondent/Counter-Claimant, Yeni Malatyaspor, has to pay to the Claimant/Counter-Respondent 1, the following amount(s):
 - EUR 60,000 as outstanding remuneration plus 5% interest *p.a.* as from 16 September 2021 until the date of effective payment;
 - EUR 80,000 as outstanding remuneration plus 5% interest *p.a.* as from 31 October 2021 until the date of effective payment;
 - EUR 80,000 as outstanding remuneration plus 5% interest *p.a.* as from 1 December 2021 until the date of effective payment;
 - EUR 80,000 as outstanding remuneration plus 5% interest *p.a.* as from 31 December 2021 until the date of effective payment;
 - EUR 1,260,000 as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 6 April 2022 until the date of effective payment.
4. Any further claims of the Claimant/Counter-Respondent 1 are rejected.
5. The counterclaim of the Respondent/Counter-Claimant 1 is rejected.
6. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.
7. 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.

8. 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.
9. 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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