

Decision of the Dispute Resolution Chamber

passed on 4 August 2022

regarding an employment-related dispute concerning the player **Ismaël Kanda**

BY:

Omar Ongaro (Italy), Deputy Chairperson
Laurel Vaurasi (Fiji), member
Khadija Timera (Senegal), member

CLAIMANT:

Ismaël Kanda, France
Represented by Ms Laura Grange, UNFP

RESPONDENT:

CS Gaz Metan Mediaș, Romania

I. Facts of the case

1. On 1 February 2021, the French player, Ismaël Kanda (hereinafter: *the Claimant*), and the Romanian club, CS Gaz Metan Mediaș (hereinafter: *the Respondent*) signed an employment contract (hereinafter: *the Contract*) valid as from the date of signature until 30 June 2024.
2. In accordance with Article IV.a of the Contract, the Respondent undertook to pay the Claimant as follows:
 - Net monthly salary of EUR 1,500 between 1 February 2021 and 30 June 2021;
 - Net monthly salary of EUR 3,000 between 1 July 2021 and 30 June 2022;
 - Net monthly salary of EUR 4,000 between 1 July 2022 and 30 June 2023;
 - Net monthly salary of EUR 5,000 between 1 July 2023 and 30 June 2024.
3. In accordance with the same provision, these salaries are payable by the 20th day of the following respective month.
4. Furthermore, in accordance with Article IV.b of the Contract, the Respondent undertook to pay the Claimant bonus payments as follows:
 - EUR 300 net for every point gained by the Respondent in an official game, provided that the Claimant plays in that game – this amount shall be reduced to 50% if the team fails to qualify for the “play-off” stage of the competition;
 - EUR 100 for every game with a “positive result” in which the Claimant has played and the team has not conceded a goal;
 - EUR 100 for every game with a “positive result” in which the Claimant has played and the team has scored a goal.
5. Additionally, in accordance with Article IV.c of the Contract, the Respondent undertook to pay the Claimant a monthly accommodation indemnity of EUR 200, as well as two return flight tickets between Romania and France per season.
6. By correspondence dated 21 April 2022, the Claimant put the Respondent in default of payment of EUR 17,701.74, corresponding to a pro-rata amount exceeding five monthly salaries, setting a time limit expiring on 1 May 2022 in order to remedy the default.
7. By correspondence dated 2 May 2022, the Claimant put the Respondent in default of payment for a second time, for the outstanding amount of EUR 20,901.74, corresponding to the pro rata amount of 6 monthly salaries, setting a time limit expiring on 7 May 2022 in order to remedy the default.
8. By correspondence dated 11 May 2022, the Claimant terminated the Contract unilaterally.

9. On 5 July 2022, the Claimant and the Portuguese club, Vitoria Setubal (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 Claimant a total remuneration of EUR 40,000 for the duration of the New Contract.

II. Proceedings before FIFA

11. On 13 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

12. According to the Claimant, the Respondent defaulted on several monthly remuneration payments, at the time of termination in a pro-rata amount exceeding 6 months.
13. At the time the Claimant terminated the Contract, he had put the Respondent in default of the relevant amounts twice, granting a 10-day and 5-day deadline each time respectively. The Claimant therefore argues that he had just cause to terminate the Contract in line with art. 14bis of the Regulations on the Status and Transfer of Players.
14. The Claimant requested outstanding remuneration in the amount of EUR 20,601.74, corresponding to the pro-rata value of the monthly salaries owed between October 2021 and May 2022, plus EUR 1,473.33, corresponding to the accommodation indemnity for the same period, plus bonus payments in the amount of EUR 350 in line with Article IV.b of the Contract, giving rise to a total amount of EUR 22,425.07.
15. Furthermore, the Claimant requested interest at 5% *p.a.* as from the respective due dates of the outstanding instalments until the date of effective payment.
16. The Claimant also requested compensation due to breach of contract in the amount of EUR 118,026.67, corresponding to the residual value of the Contract as from the date of termination, plus six return tickets from Romania to France, the value of which the Claimant requested to be calculated by FIFA Travel.
17. Furthermore, the Claimant requested interest at 5% *p.a.* on any compensation payable as from 11 May 2022 until the date of effective payment.

b. Position of the Respondent

18. Despite being invited to do so, the Respondent failed to provide its position to the claim lodged by the Claimant.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

19. 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 13 May 2022 and submitted for decision on 4 August 2022. Taking into account the wording of art. 34 of the July 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.
20. 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 French player and a Romanian club.
21. 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 13 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

22. 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

23. 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

24. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the justice of the early termination of the Contract effected by the Claimant was in dispute, based on the alleged non-payment of certain financial obligations by the Respondent as per the Contract, in accordance with art. 14bis of the Regulations.
25. In this context, the Chamber acknowledged that its task was to determine, based on the evidence presented by the Claimant – in the absence of a submission by the Respondent – whether the claimed amounts had in fact remained unpaid by the latter and, if so, whether the formal pre-requisites of art. 14bis of the Regulations had been fulfilled.
26. 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).
27. The Chamber noted that the Claimant claimed not having received large parts of his remuneration corresponding to the period between October 2021 and May 2022, in the total amount of EUR 20,601.74, or more than six monthly salary instalments, as well as the accommodation allowance for the same period in the amount of EUR 1,473.33 and bonus payments under the Contract in the amount of EUR 350, giving rise to a total amount of EUR 22,425.07. Furthermore, the Chamber noted that the Claimant has provided written evidence of having put the Respondent in default on 21 April 2022 and 2 May 2022 respectively, i.e., providing a combined deadline of at least 15 days before unilaterally terminating the Contract.
28. The Chamber also noted that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the Contract concluded between the parties. Nonetheless, the Respondent failed to provide any evidence in order to prove the payment of the amounts claimed as outstanding by the Claimant.
29. Thus, the Chamber concluded that the Claimant had just cause to unilaterally terminate the Contract, based on art. 14bis of the Regulations.

ii. Consequences

30. 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.
31. The Chamber observed that the Claimant was owed a pro-rata amount of EUR 1,501.74 for the month of October 2021, the entire salaries between November 2021 and April 2022 in the amount of EUR 18,000 (i.e., 6 times EUR 3,000), the accommodation allowance between October 2021 and April 2022 in the amount of EUR 1,400 (i.e., 7 times EUR 200), and bonus payments in the amount of EUR 350. Furthermore, as the salary and accommodation allowance for May 2022 had not fallen due at the time of termination yet, the Chamber considered that these amounts should not be considered as outstanding amounts, and should instead be included in the calculation of the compensation due to the Claimant as a result of the unlawful breach of contract by the Respondent.
32. As a consequence, and in accordance with the legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay the Claimant the amounts which were outstanding at the time of termination, i.e., EUR 21,251.74 (i.e., EUR 1,501.74 plus EUR 18,000 plus EUR 1,400 plus EUR 350).
33. 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 on the outstanding amounts as follows:
- 5% *p.a.* on the amount of EUR 1,701.74 as from 21 November 2021;
 - 5% *p.a.* on the amount of EUR 3,200 as from 21 December 2021;
 - 5% *p.a.* on the amount of EUR 3,200 as from 21 January 2022;
 - 5% *p.a.* on the amount of EUR 3,200 as from 21 February 2022;
 - 5% *p.a.* on the amount of EUR 350 as from 1 March 2022;
 - 5% *p.a.* on the amount of EUR 3,200 as from 21 March 2022;
 - 5% *p.a.* on the amount of EUR 3,200 as from 21 April 2022;
 - 5% *p.a.* on the amount of EUR 3,200 as from 21 May 2022.
34. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the Claimant by the Respondent 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 Claimant 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.

35. 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.
36. 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.
37. As a consequence, the Chamber determined that the amount of compensation payable by the Respondent to the Claimant 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.
38. Bearing in mind the foregoing as well as the claim of the Claimant, the Chamber proceeded with the calculation of the monies payable to the Claimant under the terms of the Contract until its term. From the time of termination until the term of the Contract, the Claimant would have been entitled to the following amounts:
 - EUR 3,000 corresponding to the salary for May 2022;
 - EUR 200 corresponding to accommodation allowance for May 2022;
 - EUR 3,000 corresponding to the salary for June 2022;
 - EUR 200 corresponding to accommodation allowance for June 2022;
 - EUR 48,000 corresponding to the salary for the 2022-2023 season;
 - EUR 2,400 corresponding to accommodation allowance for the 2022-2023 season;
 - EUR 60,000 corresponding to the salary for the 2023-2024 season;
 - EUR 2,400 corresponding to accommodation allowance for the 2023-2024 season.
39. Consequently, the Chamber concluded that the amount of EUR 119,200 serves as the basis for the determination of the amount of compensation for breach of contract.
40. In continuation, the Chamber verified whether the Claimant 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.

41. Indeed, the Claimant found new employment with the New Club. In accordance with the New Contract, the Claimant was entitled to a total remuneration of EUR 40,000 for the duration of the New Contract. Given that the New Contract entirely overlapped in term with the Contract between the Claimant and the Respondent, the Chamber concluded that the Claimant mitigated his damages in the amount corresponding to the total value of the New Contract, i.e., EUR 40,000.
42. 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, 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 Respondent, and therefore decided that the Claimant shall receive additional compensation.
43. In this respect, the Chamber decided to award the amount of additional compensation of EUR 9,000, i.e., 3 times EUR 3,000 which corresponds to the monthly remuneration of the Claimant at the time the Contract was terminated and the present claim was lodged.
44. In addition thereto, the Chamber took note of the Claimant's request to receive one flight ticket from Romania to France to be calculated by FIFA Travel. In this respect, the Chamber established that, based on the fact that the Claimant has not substantiated in its claim whether or not any of the flight tickets claimed have been used, in line with its longstanding jurisprudence, the Chamber decided to award one flight ticket in the amount of EUR 340, as calculated by FIFA Travel, corresponding to the Claimant's return flight home following the early termination of the Contract.
45. 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.
46. Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Respondent must pay the amount of EUR 88,540 to the Claimant (i.e. EUR 119,200 minus EUR 40,000 plus EUR 9,000 plus EUR 340), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
47. 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 from 13 May 2022, i.e., the date the present claim was lodged, until the date of effective payment.

iii. Consequences of art. 17 par. 4 of the Regulations

48. 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 Respondent 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.
49. 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*”.
50. In this respect, the Chamber took note that the Claimant was born on 8 November 2000 and the Contract with the Respondent was concluded on 1 February 2021. Furthermore, the Chamber noted that the Claimant terminated the Contract with just cause on 11 May 2022. The breach of contract by the Respondent had, therefore, occurred within the protected period.
51. Furthermore, the Chamber noted that the Respondent had already been held liable of breach other players’ contracts without just cause on several occasions, in particular in the cases with reference FPSD-4543, FPSD-4934 and FPSD-5778.
52. Consequently, the Chamber decided that, by virtue of art. 17 par. 4 of the Regulations, the Respondent shall be sanctioned with a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.
53. Finally, and given that sporting sanctions have been imposed on the Respondent, the Chamber concluded that art. 24 par. 3 lit. a) of the Regulations shall not apply in this case.

d. Costs

54. 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.

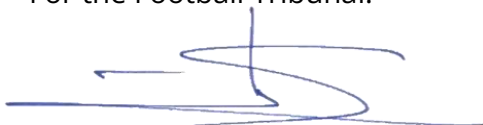
55. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
56. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made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

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Ismaël Kanda, is partially accepted.
2. The Respondent, CS Gaz Metan Mediaș, has to pay to the Claimant, the following amount(s):
 - EUR 1,701.74 as outstanding remuneration plus interest of 5% *p.a.* as from 21 November 2021 until the date of effective payment;
 - EUR 3,200 as outstanding remuneration plus interest of 5% *p.a.* as from 21 December 2021 until the date of effective payment;
 - EUR 3,200 as outstanding remuneration plus interest of 5% *p.a.* as from 21 January 2022 until the date of effective payment;
 - EUR 3,200 as outstanding remuneration plus interest of 5% *p.a.* as from 21 February 2022 until the date of effective payment;
 - EUR 350 as outstanding remuneration plus interest of 5% *p.a.* as from 1 March 2022 until the date of effective payment;
 - EUR 3,200 as outstanding remuneration plus interest of 5% *p.a.* as from 21 March 2022 until the date of effective payment;
 - EUR 3,200 as outstanding remuneration plus interest of 5% *p.a.* as from 21 April 2022 until the date of effective payment;
 - EUR 3,200 as outstanding remuneration plus interest of 5% *p.a.* as from 21 May 2022 until the date of effective payment;
 - EUR 88,540 as compensation for breach of contract without just cause plus interest of 5% *p.a.* as from 13 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 **within 30 days** of notification of this decision.
5. If the aforementioned sum plus interest is not paid **within 30 days** of notification of this decision, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and formal decision.

6. The Respondent, CS Gaz Metan Mediaş, shall be banned from registering any new players, either nationally or internationally, for the next two entire and consecutive registration periods following the notification of the present decision.
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).

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