

Decision of the Dispute Resolution Chamber

passed on 3 April 2024

regarding an employment-related dispute concerning the player Britt Curtis Assombalonga

BY:

Andre dos Santos Megale, Brazil

CLAIMANT:

Britt Curtis Assombalonga, Great Britain

Represented by Erkan Yucel Ozturk

RESPONDENT:

Yukatel Adana Demirspor A.S., Türkiye

Represented by Umur Varat

I. Facts of the case

1. On 1 August 2021, the British player Britt Curtis Assombalanga (hereinafter: **Player** or **Claimant**) and the Turkish club Yukatel Adana Demirspor A.S. (hereinafter: **Club** or **Respondent**) entered into an employment contract valid as from the date of signature until 31 May 2024 (hereinafter: **Employment Contract**).
2. On 27 January 2023, the Player and the Club signed a *Mutual Termination Agreement* by means of which they (i) terminated the Employment Contract; and (ii) established the financial consequences in connection thereto (hereinafter: **Termination Agreement**).
3. Pursuant to the Termination Agreement, the Club undertook to pay the Player a total amount of EUR 160,000 net, payable as follows:
 - EUR 50,000 on 30 April 2023;
 - EUR 50,000 on 30 May 2023; and
 - EUR 60,000 on 30 June 2023.
4. Clause 3 of the Termination Agreement reads as follows:

“Above mentioned Termination Payment shall be made only if the Player shall sign a contract to any Club except the Clubs located in Turkey. In case of Player shall sign a contract with a Turkish Club, Club shall not make payments written above (EUR 160.000). In addition Player accepts to pay 500.000 Euro to the Club as an early termination compensation”.
5. In accordance with the information retrieved from the FIFA Transfer Matching System (**TMS**) and confirmed by the Player, on 30 January 2023 he entered into a new contract with the English club, Watford FC.
6. On 10 January 2024, the Player put the Club in default and requested payment of EUR 110,000 within the following 10 days.
7. On 25 January 2024, the Player lodged the claim at hand before FIFA for overdue payables. In particular, the Player requested to be awarded EUR 110,000 net under the Termination Agreement plus 5% interest *p.a.* as follows:
 - On EUR 50,000 as from 1 June 2023; and
 - On EUR 60,000 as from 1 July 2023.
8. On 8 March 2024, the Club submitted its reply to the claim. In doing so, the Club acknowledged its default towards the Player, however argued that it was prevented to make the payment due to financial impact of the earthquake in Türkiye and especially the city of Adana.

9. The Club pointed out to the fact that a state of emergency was declared on 8 February 2023, as well as the national currency had depreciated by more than 50%. Likewise, it recalled its good reputation when it comes to financial obligations but stated that it did not have the means to comply with a payment order.
10. Given the above, the Club requested that the claim be rejected. Alternatively, it claimed that interest should arise as from the 20 January 2024, namely the date when the deadline granted by the Player in his default notice expired.

II. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

11. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter: **Single Judge**) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 25 January 2024 and submitted for decision on 8 March 2024. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: **Procedural Rules**), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
12. Furthermore, the Single Judge 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 (February 2024 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 British player and a Turkish club.
13. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (February 2024 edition), and considering that the present claim was lodged on 25 January 2024, the May 2023 edition of said regulations (hereinafter: **Regulations**) is applicable to the matter at hand as to the substance.

b. Burden of proof

14. The Single Judge 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 Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties, including without limitation the evidence generated by or within the TMS.

c. Merits of the dispute

15. The competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single Judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

16. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that it pertains to a claim for outstanding remuneration only, based on the Termination Agreement.

17. In particular, the Single Judge acknowledged that the sum now claimed by the Player (*i.e.*, EUR 110,000) is contractually based and the debt was acknowledged by the Club, who nonetheless referred to the earthquake in Türkiye and its economic impacts to justify its default.

18. While considering the above and despite being mindful of the argumentation of Club, the Single Judge found it decisive that the Club failed to submit any documentary evidence regarding the impossibility to perform the payments and/or any attempt to avoid litigation by reaching any amicable solution with the Player. Conversely, he highlighted that:

- according to the information retrieved from the TMS, the Club has engaged in multiple transactions in the last year (*i.e.*, after February 2023), therefore pursuing its footballing activities with seemingly normality; and
- the Club did not advance any proof that it ever tried to settle the debt with the Player and/or provided any explanation to this extent, especially when considering that *(i)* it was put in default; and *(ii)* the second instalment of the transfer fee has already been overdue for more than 5 months.

19. By way of conclusion, the Single Judge decided that the reasons invoked by the Club could not succeed, hence the Player should be entitled to the outstanding remuneration sought in line with the general legal principle of *pacta sunt servanda*.

20. In addition, taking into consideration the Player's request as well as the constant practice of the Football Tribunal in this regard, the Single Judge decided to award the Player interest at the rate of 5% *p.a.* on the outstanding amounts as from its due dates until the date of effective payment. For completeness, the Single Judge expressly rejected the alternative request of the Club concerning the postponement of the interests based on all the same

reasons outlined above and in particular the Club's failure to substantiate its position *vis-à-vis* the timeline of the case.

ii. Art. 12bis of the Regulations

21. The Single Judge then referred to 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.
22. To this end, the Single Judge confirmed that the Player put the Club in default of payment of the amounts sought, which had fallen due form more than 30 days, and granted the Club with 10 days to cure such breach of contract.
23. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations it has competence to impose sanctions on the Club. On account of the above and bearing in mind that this is the second offense by the Club within the last two years, the Single Judge decided to impose a reprimand on the Club in accordance with art. 12bis par. 4 lit. b) of the Regulations.
24. In this connection, the Single Judge wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

iii. Compliance with monetary decisions

25. Finally, taking into account the applicable Regulations, the Single Judge 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.
26. In this regard, the Single Judge 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.
27. Therefore, bearing in mind the above, the Single Judge 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.

28. 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.
29. The Single Judge 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

30. The Single Judge 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 Single Judge decided that no procedural costs were to be imposed on the parties.
31. Likewise, and for the sake of completeness, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules and decided that no procedural compensation shall be awarded in these proceedings.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Britt Curtis Assombalonga, is accepted.
2. The Respondent, Yukatel Adana Demirspor A.S., must pay to the Claimant the following amount(s):
 - **EUR 50,000 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 June 2023 until the date of effective payment; and
 - **EUR 60,000 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 July 2023 until the date of effective payment.
3. A **reprimand** is imposed on the Respondent.
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 Governing the Football Tribunal).

CONTACT INFORMATION

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