FIFA FOOTBALL TRIBUNAL

Decision of the Dispute Resolution Chamber

passed on 4 April 2024

regarding an employment-related dispute concerning the player Bruno da Silva Peres

COMPOSITION:

Frans DE WEGER (The Netherlands), Chairperson
Peter LUKASEK (Slovakia), Member
Dana MOHAMED AL-NOAIMI (Qatar), Member

CLAIMANT:

Bruno da Silva Peres, Brazil
Represented by Tannuri Ribeiro Advogados

RESPONDENT:

Trabzonspor AS, Türkiye
Represented by Duygu Yaşar

FIFA FOOTBALL TRIBUNAL

I. Facts of the case

The Parties

1. The parties to this dispute are the Brazilian player Bruno da Silva Peres (hereinafter: **Player** or **Claimant**) and the Turkish club Trabzonspor AS (hereinafter: **Club** or **Respondent**).

2. The Player and the Club are hereinafter jointly referred to as **Parties.**

The employment relationship between the Parties

3. On 16 June 2021, the Parties concluded an employment contract valid as from 1 July 2021 until 31 May 2024 (hereinafter: **Employment Contract**).

4. Pursuant to the Employment Contract, the Player would be entitled *inter alia* to EUR 1,200,000 net per season, plus a sign-on fee and contingent payments depending on sporting goals.

5. On 11 February 2023, the Player *(a)* put the Club in default for outstanding remuneration amounting to EUR 600,000 and *(b)* requested the breach to be cured within 15 days.

6. On 15 February 2023, the Club replied to the Player's letter. Contextually, the Club acknowledged its default and made an offer for higher payment, however in instalments.

7. On 27 April 2023, the Parties decided to terminate the Employment Contract and entered into a Mutual Termination Agreement (hereinafter: **Termination Agreement**).

8. Pursuant to clause 3.1 of the Termination Agreement, the Club undertook to pay to the Player the total amount of EUR 1,600,000, as follows:

    - EUR 300,000 net by 25 May 2023;
    - EUR 300,000 net by 3 July 2023;
    - EUR 300,000 net by 1 October 2023;
    - EUR 200,000 net by 30 November 2023;
    - EUR 200,000 net by 29 March 2024;
    - EUR 300,000 net by 15 May 2024.

9. Clause 3.3 of the Termination Agreement reads as follows:

    "*3.3. In the event the CLUB fails to comply with the payment of any of the instalments of the TERMINATION AMOUNT within 30 (thirty) days following the due dates set out above the PARTIES herein agree to establish a so-called 'acceleration clause'. In other words, all the outstanding and remaining instalments of the TERMINATION AMOUNT shall become*

due and payable immediately. Furthermore, a penalty of 10% (ten) and a default interest of 5% (five) per annum shall accrue on the TERMINATION AMOUNT as from the due date until the date of payment".

In parallel, the civil proceedings involving the Player

10. According to the documentation on file, the Player is a party to a civil claim filed by the Italian company, Baltica SPV SRL (hereinafter: **Baltica**) before the Civil Court of Rome under ref. no. 643-2023 (hereinafter: **Civil Claim**).

11. It is established that Baltica holds a credit against the Player for an amount of around EUR 500,000, plus interests, legal costs, VAT, and general expenses – in virtue of a payment order issued by the same court on 11 April 2022.

12. Furthermore, on 27 October 2022, a writ of execution was served on the Player for a total amount of EUR 541,403.23. As a consequence, third-party orders ("writ of attachment") were addressed by the Civil Court of Rome to *inter alia* the Club in January and September 2023 apparently giving instructions concerning the submission of a declaration of credits connected to the Player and pending payments.

13. On 24 October 2023, the Club wrote to the Civil Court of Rome and stated as follows*, in verbis*:

> *"In accordance with your letters numbered as in ref. a and ref. b which were sent to the* [Club] *due to the case being heard between* [the Player] *and* [Baltica]*, it has been stated that in case* [the Player] *has any progress payments from the* [the Club] *the amount of 541,403.23 Euros of these progress payments has been sequestrated over the judgement specified in the file number above and it has been requested to provide a declaration regarding this situation.*
>
> *We hereby state that the attachment notice sent by your court has been entered into the client's records, that* [the Player] *has a receivable as of the-date of notification of the attachment notice to the* [the Club]*, and that your attachment order has been processed for the 541,403.23 Euro portion of this amount specified in the content of the writ of execution.*
>
> *Furthermore, we respectfully request and demand that the* [Club] *notify* [the Player] *and his attorney individually regarding the fact that 541.403.23 Euros of* [the Player's] *receivable has been blocked.*
>
> *Sincerely. we submit for your information".*

14. On 31 October 2023, the Player sent an email to the Club stating as follows, *in verbis*:

"On 26.10.2023, [Baltica] *sent* [the Player] *via email a copy of an order issued by the Civil Court of Rome, section III securities enforcement re n. 643/2023, dated 22 May 2023.*

The aforementioned provision of the Civil Court of Rome was notified to this company on 13.07.2023 and was made as part of an enforcement procedure initiated by Baltica SPV srl to the detriment of Mr. Bruno Da Silva Peres, in which he holds the role of third seized this company.

With the aforementioned provision, the Civil Court of Rome, having noted that Trabzonspor did not make the third party declaration for the hearing on 22 May 2023, required Baltica SPV srl to notify this Company of the foreclosure deed with the order and the supplementary deed to the seizure providing that, if at the hearing on 29 November 2023 the football club does not appear and does not make the third party's declaration that it is in possession of sums due to Bruno Da Silva Peres, the seized credit will be considered uncontested.

To be executed in Turkey, sentences and measures rendered by Italian Courts must be subjected to an internal procedure (so-called exequatur) by competent Turkish Courts.

Since it does not appear that the sentence and the measures implemented by Baltica SPV srl, against Trabzonspor have been subjected to an internal exequatur procedure, Trabzonspor is hereby invited and warned to implement any initiative aimed at asserting the non-opposability to itself of provisions rendered by an Italian judge that cannot be enforced in Turkey, refraining from the sums due to Bruno Da Silva Peres by virtue of rulings that cannot be enforced in the Turkish Republic.

In the interest of Bruno Da Silva Peres it is noted that, if Trabzonspor decides to take initiatives aimed at countering the claim of Baltica SPV srl or provides, in the absence of legal prerequisites, to pay sums of hopes of Bruno Da Silva Pares I consequently cause economic damage to Mr. Bruno Da Silva Peres, the latter will be forced to initiate any appropriate action towards the football club in order to obtain compensation for the economic damage resulting from his conduct".

15. On 10 November 2023, the Club replied to the abovementioned email from the Player as follows, *in verbis*:

"In the notice of levy sent to [the Club] *through the file 643/2023 r.g.e. (execution general registration file) of the 3rd Division of the Civil Court of Rome, where* [Baltica] *is the plaintiff/creditor and* [the Player] *is the defendant/debtor, it was asked whether* [the Player] *had any progress payments from* [the Club]*, and if he had, it was reported that the amount of EUR 541.403,23 of these progress payments was attached/blocked at the conclusion of the proceedings specified in the file number above.*

There is a 1926 dated 'Convention between Turkey and Italy on Judicial Protection, Mutual Assistance of Judicial Authorities in Civil and Criminal Matters and Recognition and Enforcement of Judicial Decisions', which was entered into force on 15/05/1931 after being published in the Official Gazette dated 03/03/1929 and numbered 1133 and ratified by the Law numbered 1394 and dated 16/02/1929.

In accordance with the provisions of the above-mentioned convention between Turkey and Italy, we respectfully inform you that the notice of levy sent to [the Club] *has been registered in the records of* [the Club] *and that as of the date of notification of the notice of levy,* [the Player's] *receivable of 300.000 Euros has been blocked in accordance with the relevant court decision, and that on the next progress payment date, 241.403,23 Euros of his receivable will be blocked and the remaining part will be paid to* [the Player]*".*

II. Proceedings before FIFA

16. On 21 November 2023, the Player filed the claim at hand before FIFA. A brief summary of the position of the Parties is detailed in continuation.

a. Claim of the Player

17. In his claim, the Player recalled the negotiations between the Parties and the events that preceded the signature of the Termination Agreement. Furthermore, he pointed out to the fact that the Club repetitively failed to honour its financial duties, reason why he decided to seek relief before FIFA.

18. In particular, the Player stressed that the Club only paid the two first instalment of the Termination Agreement. Consequently, by leaving the third instalment unpaid for more than 30 days, the acceleration clause was triggered, and the Club became liable to pay him the following amounts, which he requested to be awarded:

- the residual amount of EUR 1,000,000 plus 5% interest as from 2 October 2023; and
- the contractual penalty of EUR 160,000 plus 5% interest as from 2 October 2023.

b. Reply of the Club

19. On 18 December 2023, the Club filed its reply to the claim.

20. In its reply, the Club filed evidence concerning the Civil Claim. In doing so, it argued that despite having complied with the payment of the two first instalments of the Termination Agreement, it was prevented from paying the remaining amount. In fact, the Club stressed that the amounts owed to the Player were "blocked" as a result of the restriction order by the Court of Rome, *in verbis:*

"11. As a result, the Club blocked the amount ordered to be blocked by the preliminary injunction under threat of attachment and notified that to the Civil Court of Rome and the Player (Annexe-4 and Annexe-5).

12. This is due to Law 1394 (Annexe-6), which the Club was reminded of by the competent authorities in Turkiye. The Club has blocked the amount ordered by the Civil Court of Rome on the grounds that if the award is subsequently enforced in compliance with the aforementioned legislation, the Club will be deemed to be in possession of that amount and will be obliged to remit that amount once again to the creditor.

13. As a result, the non-payment to the Player cannot be deemed a violation of pacta sund servanda; rather, it is the result of a judge's decision that the Player was informed of from the outset.

14. Under these conditions, it is not possible to assert that the Club has breached the Agreement".

21. The Club also added, in this respect:

"19. It is unreasonable to expect the Respondent to assume the risk of duplicate payments for a debt that a State Court has ordered blocked and which the player does not even deny exists.

20. The treaty on reciprocal assistance of judicial authorities in civil and criminal proceedings, as well as the enforcement of judicial decisions between Turkey and Italy, is stipulated in Law o. 1394, which was published in 1929.

21. The Respondent has blocked the amount requested by the Rome Civil Court to be blocked due to the Player as a preliminary injunction. This is due to the fact that should the judgment be subsequently enforced in compliance with the aforementioned legislation, the Club would be considered to be in possession of the sum and would be obligated to reimburse the creditor once more.

22. Given the aforementioned conditions, the non-payment to the Player cannot be deemed a violation of pacta sun[t] servanda; on the contrary, it was due to a judge's ruling that the Player was promptly informed of."

22. In conclusion, the Club alleged that: "*The Respondent cannot be held in breach of the* [Termination Agreement] *on account of the writ of attachment issued by the Roma Civil Court, which orders the Respondent to impede the Player's receivables; therefore, the file should be closed accordingly*".

c. Rejoinder of the Player

23. On 18 January 2024, the Player filed his rejoinder in the case at hand.

24. The Player initially challenged the documentation filed by the Club in connection with the Civil Claim. He argued, in this respect, that the evidence submitted by the Club is unclear and insufficient to the assessment by the Football Tribunal. Furthermore, the Player explained that the decision by the Civil Court of Rome is under appeal, therefore shall not be taken into consideration.

25. Secondly, the Player outlined that the Club was already aware of the Civil Claim when in concluded the Termination Agreement, hence cannot rely on its existence to depart from its financial obligations (*venire contra factum proprium*). The Player also added that the compensation in the Termination Agreement exceeds the amount allegedly blocked in the context of the Civil Claim – therefore suggesting that there was no real impossibility to pay.

26. Thirdly, the Player stressed that the FIFA regulations and the *lex sportiva* should prevail in the analysis of the case at hand. He referred to the jurisprudence of the Football Tribunal to this extent and alleged that the there was no reason for the Dispute Resolution Chamber to depart from its standard practice.

27. Fourthly and notwithstanding all the above, the Player also stressed that in any scenario the decision of the Court of Rome "[...] *is not final and binding as it has been appealed. Moreover, no procedure of exequatur has even started in front of the courts of Turkey, even less been rendered. Notably, the Club was only apprised of the Civil Court of Rome's decision through communication from the Ministry of Justice of Turkey, not from any Turkish judicial authority*".

28. In light of the above, the Player ratified his requests for relief as per his statement of claim.

d. Final comments of the Club

29. On 25 January 2024, the Club filed its final comments on this matter. In doing so, the Club firstly acknowledged that the Player confirmed the existence of the Civil Claim, hence argued that he bore the burden of proving that the decision was not enforceable.

30. Because the Club disputed its obligation to pay the instalments due in October and November 2023, it also argued that the acceleration clause included in the Termination Agreement was not triggered. Consequently, the Club underlined that the amount pending is lower that the one withheld due to the Civil Claim.

31. In addition, the Club insisted that it has blocked the amount owed to the Club, however without filing any evidence in this respect. In particular, the Club alleged, *in verbis*:

"29. The Respondent remitted the Player's instalments in a timely manner until receipt of the second attachment notice. The Respondent has blocked the amount requested by the Rome Civil Court to be blocked due to the Player as a preliminary injunction. This is due to the fact that should the judgment be subsequently enforced in compliance with the aforementioned legislation, the Club would be considered to be in possession of that sum and would be obligated to reimburse the creditor once more. It is unreasonable to expect the Respondent to assume the risk of duplicate payments for a debt that a State Court has ordered blocked and which the Player does not deny deny exists".

32. The Club reiterated that the claim should be rejected.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

33. First of all, the Dispute Resolution Chamber (hereinafter: **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 21 November 2023 and submitted for decision on 4 April 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.

34. Furthermore, 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 (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 Brazilian player and a Turkish club.

35. 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 (February 2024 edition) and considering that the present claim was lodged on 21 November 2023, the May 2023 edition of said regulations (hereinafter: **Regulations**) is applicable to the matter at hand as to the substance.

b. Burden of proof

36. 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

37. 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

38. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that it pertains to a claim for overdue payables based on the Termination Agreement.

39. The DRC acknowledged that it remained undisputed between the Parties that the Club failed to pay to the Player the second and the third instalments of the Termination Agreement. Nevertheless, the Parties strongly dispute whether there was a valid reason for such default, as follows:

- On one hand, the Player argues that the payment should have been made by the Club on a timely fashion, the failure of which triggered the acceleration and penalty clauses.

- On the other hand, the Club claims that it was prevented from making the payment to the Player due to a restriction order imposed by the Civil Court of Rome on the Player in the context of the Civil Claim. In particular, the Club stresses that the amount owed to the Player was blocked, as it could not be paid under penalty of breaching the ruling of such body.

40. In this context, the DRC considered that its task is to establish whether the argumentation of the Club concerning the impossibility to make the payments is grounded and the ensuing consequences.

41. With the above in mind, the Chamber initially turned its attention to the documentation provided by the Club in support of its narrative. In doing so, the DRC concurred with the Player to the degree that the evidence on file is indeed limited and it does not allow for complete overview of the case. Further, the Chamber outlined that the exhibits advanced by the Club make reference to multiple dates, parties and orders, which were also not properly explained, to the Club's detriment.

42. Having carefully analysed the file, the Chamber could only establish that *(i)* the Player apparently owes an amount of approx. EUR 541,403.23 to Baltica; *(ii)* such debt was communicated to a list of entities to which the Player was a creditor, including but not limited to the Club; *(iii)* the said entities were required to undertake some procedural steps in light with the Italian law, such as filing a specific type of declaration; and *(iv)* such debt is still pending. Nevertheless, the DRC could not precise whether the Club submitted the relevant declaration, as well as whether it was in fact invited to pay such amounts to a specific bank account and/or to block any deliverables to the Player, such as claimed by the Club.

43. The Chamber highlighted that the only supporting evidence filed by the Club besides the orders issued by the Court of Rome was the copy of the Law No.1394, which however was also not conclusive *per se.* Without concrete explanations of the Club on this matter, the DRC was of the opinion that the mere reference to the legal diploma had no bearing in its analysis.

44. Equally important, in the Chamber's view, was the fact that the Club acknowledged that the decision of the Civil Court of Rome was under appeal and did not advance any counter-argumentation in this regard. Consequently, the DRC found it uncertain whether any of the orders filed by the Club in fact stands to date. Likewise, the Chamber remarked that: *(i)* the Termination Agreement was concluded after the decision had been communicated to the Club in the context of the Civil Claim; *(ii)* the Parties did not provide for any contractual remedy in the Termination Agreement and, to the contrary, some of the instalments were even paid by the Club to the Player; and *(iii)* the Club did not advance evidence that it tried to seek information with the Player or the Italian judicial authorities, let alone that it tried to find an amicable solution in this respect.

45. On top of the above, the Chamber found it decisive that despite alleging in multiple opportunities that the amount owed to the Player was "blocked" (hence could not be paid), the Club did not submit any proof in this respect (*i.e.,* bank statement, deposit in escrow account, payment receipt to Italian authorities). The DRC stressed that such confirmation would be of utmost importance to support the Club's position that it was indeed complying with a restrictive order in good faith – and not simply evading from its financial obligations.

46. Based on all the abovementioned considerations, the DRC decided that the argumentation of the Club could not succeed, therefore the Player should be entitled to the outstanding remuneration sought on the basis of the principle of *pacta sunt servanda*.

47. In particular, the Chamber confirmed that the acceleration / penalty clause was successfully triggered entailing that the Player should be awarded the entire residual remuneration, plus interests, and the contractual penalty, as follows:

    - EUR 300,000 net plus 5% interest *p.a.* as from 2 October 2023;

- EUR 700,000 net plus 5% interest *p.a.* as from 1 November 2023;

- EUR 160,000 net as contractual penalty (*i.e.,* 10% of the "termination amount"), also deemed reasonable and proportionate in line with the DRC's jurisprudence.

48. In conclusion, the Chamber ruled the claim of the Player partially accepted, with the difference limited to the *dies a quo* for the interest. The DRC also established that no interest should be applied over the penalty (*ne bis in idem*).

ii. Compliance with monetary decisions

49. 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.

50. At this point and for the sake of completeness, the DRC highlighted that the Club could not establish that it was indeed prevented from paying any amounts to the Player, reason why it expressly confirmed that art. 24 of the Regulations should be applied in the case at hand.

51. Subsequently, 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.

52. 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.

53. 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.

54. 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

55. 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.

56. 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.

57. 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, Bruno da Silva Peres, is partially accepted.

2. The Respondent, Trabzonspor Futbol, must pay to the Claimant the following amount(s):

   - **EUR 300,000 net as outstanding remuneration** plus 5% interest *p.a.* as from 2 October 2023 until the date of effective payment;

   - **EUR 700,000 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 November 2023 until the date of effective payment; and

   - **EUR 160,000 net as contractual penalty.**

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. 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

FIFA FOOTBALL TRIBUNAL

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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