

Decision of the Dispute Resolution Chamber

passed on 11 July 2024

regarding an employment-related dispute concerning
the player Dorian George Victor Klonaridis

COMPOSITION:

Lívia SILVA KÄGI (Brazil / Switzerland), Deputy Chairwoman
Mario FLORES CHEMOR (Mexico), member
Michele COLUCCI (Italy), member

CLAIMANT:

Dorian George Victor Klonaridis, Belgium
Represented by Alkis Papantoniou

RESPONDENT:

Ümraniyespor, Türkiye
Represented by Ercan Sevdimbaş

I. Facts of the case

1. On 9 August 2023, the Belgian player Dorian George Victor Klonaridis (hereinafter, the *Claimant* or the *Player*) and the Turkish club Ümraniyespor (hereinafter, the *Respondent* or the *Club*) concluded an employment contract (hereinafter, the *Contract*) valid until 30 June 2024.

2. In accordance with the Contract, the Club undertook to pay to the Player (hereinafter, jointly referred to as the *Parties*) the following fixed salary:

- 40.000 EUR net will be paid to THE PLAYER as advance payment on 30.08.2023. It is clearly agreed and underlined, that the advance payment is in addition the annual salary of the 160.000 EUR, below.
- 160.000 EUR net in total will be paid to THE PLAYER in 10 months by 16.000 EUR per month for the period of August 2023 – May 2024.

3. On 27 November 2023, the Parties concluded the so-called "*Termination and settlement agreement*" (hereinafter, the *Termination Agreement*).

4. According to Clause 3 of the Termination Agreement,

"The Parties agree that the Player shall receive by the total amount of 35.000 € net, as follows:

- EUR 10,000 net, payable on 28/02/2024;
- EUR 10,000 net, payable on 30/03/2024;
- EUR 10,000 net, payable on 30/04/2024;
- EUR 5,000 net, payable on 30/09/2024".

5. Furthermore, Clauses 4, 5 and 6 of the Termination Agreement provided as follows:

"4. The parties clearly and irrevocably agree that, in the event of a breach by the Club of any of its obligations agreed herein, and in particular the obligations arising from clauses 2 and 3 above (indicatively but not exhaustively, the non-completion by the Club of all the required administrative procedures for the de-registration of the Player and/or any delay of full payment of any of the amounts stipulated herein), the whole amount herein agreed as payable by the Club to the Player (clause 3 above) shall become immediately payable (acceleration clause).

5. In the event of breach by the Club of any of its obligations agreed herein, and in particular the obligations arising from clauses 2, 3 and 4 above (indicatively but not exhaustively, de non-completion by the Club of all the required administrative procedures for the de-registration of the Player and/or the delay of full payment of any of the amounts stipulated herein), a penalty of 25% on the amounts stipulated in clause 3 and 4 of the present Agreement shall be imposed against the Club, as a penalty clause for the

breach of the Contract. The parties clearly and unequivocally acknowledge that the agreed penalty is reasonable and proportional in accordance with the standard jurisprudence of FIFA and CAS.

6. The parties clearly and univocally agree that in case of failure to duly and completely pay any of the amounts agreed through clauses 2, 3, 4 and 5 of the present Agreement, an interest rate of 18% per annum shall apply on the total amount remaining due, from the present Agreement and/or the Contract, from the first day of delay of payment until the day of effective payment of the total due amount. The parties clarify and irrevocably agree and acknowledge that the agreed interest rate is reasonable and proportionate, in accordance with the standard jurisprudence of FIFA and CAS".

6. In accordance with Clause 8 of the Termination Agreement:

"The Parties explicitly agree, in accordance with the said contractual clause, that all payments received by the Player until today were net, as agreed in the Contract and if any tax arises, will be payable by the Club".

7. As per Clause 9 of the Termination Agreement:

"In view of the provision of clause 7 above, all payments agreed in the present Agreement shall be made to the Player net, as provided in article 7 above and in the Contract".

II. Proceedings before FIFA

8. On 1 May 2024, 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

9. According to the Player, the Club failed to pay the third instalment of EUR 10,000 net, which was payable on 30 April 2024. In this respect, the Player argued that the acceleration clause provided in Clause 4 of the Termination Agreement was activated and, consequently, the whole amount remaining due as per the Termination Agreement became due.
10. The Player also claimed being entitled to interest at a rate of 18% *per annum* as per Clause 6 of the Settlement Agreement, and to EUR 8,750 net as a contractual penalty, corresponding to an amount equivalent to 25% of the overall amount as per Clause 5 of the Termination Agreement.
11. The Player requested the following relief:
12. *In view of the above, the Claimant request by your Respectable Chamber to award the Claimant:*
- (a) *EUR 15,000 net as overdue payments arising from the employment relationship, and in particular from the Termination and Settlement Agreement signed between the parties, plus 18% interest*

p.a. on the whole amount as of the date each became due, i.e., from 01.05.2024;

(b) EUR 8,750 net as the agreed contractual penalty, equal to 25% of the whole amount of the Settlement Agreement.

b. Position of the Respondent

13. In its reply to the claim, the Club announced as Annex 1 payment receipts to the Player from which, according to the Respondent, *"It can be seen that the Respondent has paid the Claimant all payment until today. Under this circumstances (sic), it is crystal clear that the Club has fulfilled its obligations"*.
14. The Club argued that the amount claimed by the Player *"is unfair and much more than it should be"*, and that an interest rate of 18% *"is a very exorbitant rate and is a malicious act"*. The Respondent also alleged that the requested penalty clause is more than half of the unpaid instalment amount, which is not acceptable. In this respect, according to the Club, a penalty may be reduced in case of significant disproportionality.
15. The Club requested the following relief:

"The reasons explained above we kindly request you to decide judgement of dismissal about the present case.

Consider the amounts paid and good faith of the Respondent while evaluating the Claimant requests according to the reasons explained above and according to the bank receipts which was provided by the Respondent and setoff the mentioned amount from the Claimant's request.

Finally, we would like to request your honorable chamber to make a decision that the judicial costs and the attorneyship fees that the Respondent is faced with shall be paid by the Claimant. If not, to award a minimum amount of procedural cost in connection with the temporary amendment to the Procedural Rules declared with the Circular 1720".

c. Replica of the Claimant

16. In his replica, the Claimant initially argued that the Club did not provide any proof of the alleged compliance with the Termination Agreement.
17. As per the alleged disproportionality of the interest agreed in the Termination Agreement, the Player argued that the Parties freely agreed on the rate of 18% and acknowledged that this is *"reasonable and proportionate in accordance with the standard jurisprudence of FIFA and CAS"*, as expressly provided in Clause 5 of the Termination Agreement.
18. Additionally, the Player argued that an interest rate of 18% *per annum* has been accepted by numerous cases both by FIFA and the Court of Arbitration for Sport (CAS).

19. With regard to the alleged proportionality of the penalty clause, the Player argued that it shall be assessed "*on the basis of the whole amount and not on the amount that became due on 30.04.2024*". In this respect, the Claimant referred to the jurisprudence of the Chamber according to which a penalty of 25% on the principal amount shall be deemed reasonable and proportionate.
20. The Player also alleged that the proportionality of the penalty clause is confirmed by the circumstances under which the Parties decided to terminate the Contract. In this respect, the Player argued that, at the time of termination, the Club had significant overdue payables towards him, which would have allowed him to terminate the Contract under art. 14bis of the Regulations and claim the residual value of the Contract. Instead, the Player rather agreed to a mutual termination of the Contract in exchange for the payment of an amount considerably less than the overdue amounts owed to him. In this respect, "*the minimum measure that could be adopted by the Player in order to secure he will receive the monies owed to him was a penalty clause of 25% on the total settled amount, a measure that is quite usual in the football business and absolutely valid on the basis of the FIFA and CAS jurisprudence*".
21. The Player reiterated his request of relief.

d. Duplica of the Respondent

22. Despite being invited to do so, the Respondent failed to submit a duplica.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

23. First of all, the Dispute Resolution Chamber (hereinafter also referred to as the *Chamber*) 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 1 May 2024 and submitted for decision on 11 July 2024. Taking into account the wording of art. 34 of the March 2023 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.
24. Subsequently, the Chamber referred to art. 2 par. 1 and art. 24 par. 1 lit. a) 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 (June 2024 edition), it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Belgian player and a Turkish club.
25. 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 (June 2024 edition), and considering that the

present claim was lodged on 1 May 2024, the February 2024 edition of said regulations (hereinafter, *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

26. 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

27. 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

28. The Chamber firstly acknowledged that this is a claim of a player against a club concerning overdue payables arising from the Termination Agreement.
29. In this respect, the Chamber noted that the Player claimed not having received the third instalment agreed as per the Termination Agreement, amounting to EUR 10,000 net and payable on 30 April 2024. The Player argued that the Club's delay of this payment triggered the acceleration clause provided in Clause 4 of the Termination Agreement, and alleged being entitled to EUR 15,000 net, corresponding to the third and fourth instalments, as well as to EUR 8,750 net as per the contractual penalty and interest at a rate of 18% *per annum*, as per Clauses 5 and 6 of the Termination Agreement, respectively.
30. The Chamber then observed that the Club argued having fully complied with its financial obligations, and announced having submitted payment receipts as Annex 1 along with its response to the claim. However, after having carefully analysed the file, the Chamber noted that the mentioned Annex 1 was not provided in the Legal Portal with the reply to the claim neither after invitation of the FIFA General Secretariat.
31. 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 Respondent and, if so, whether the latter had a valid justification for not having complied with its financial obligations.

32. The Chamber first noted that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the Termination Agreement concluded between the Parties.
33. Nonetheless, the Chamber recalled that even though the Club alleged having complied with the Termination Agreement, no evidence was submitted in this regard, i.e., no proof of payment was provided by the Club, as assessed previously.
34. For the assessment of the amounts due by the Club to the Player, the Chamber wished to recall that according to Clause 4 of the Termination Agreement.
35. *"The parties clearly and irrevocably agree that, in the event of a breach by the Club of any of its obligations agreed herein, and in particular the obligations arising from clauses 2 and 3 above (indicatively but not exhaustively, the non-completion by the Club of all the required administrative procedures for the de-registration of the Player and/or any delay of full payment of any of the amounts stipulated herein), the whole amount herein agreed as payable by the Club to the Player (clause 3 above) shall become immediately payable (acceleration clause).*
36. In view of the clear aforementioned provision, the Chamber observed that the Club's failure to pay any of the instalments agreed in the Termination Agreement would trigger the acceleration clause provided thereof. Consequently, and considering that the Club indeed failed to pay the third instalment of the Termination Agreement, the Chamber considered that the acceleration clause was activated. Accordingly, and bearing in mind the 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 to the Claimant the outstanding amounts deriving from the Termination Agreement concluded between the Parties, namely, EUR 15,000 net, corresponding to the 3rd and 4th instalments thereof.
37. On top of that, the Chamber observed that the Player claimed being entitled to an interest rate of 18% *per annum*, as contractually stipulated per Clause 6 of the Termination Agreement.
38. The Chamber, considering the above rate reasonable, proportionate, and in line with the common approach of the Chamber, decided to award the Player interest at the rate of 18% *p.a.* on the outstanding amounts as from 1 May 2024 (i.e., day after the due date of the 3rd instalment, and date when the overall amount became due) until the date of effective payment.
39. Lastly, the Chamber observed that the Parties disputed the proportionality of the penalty agreed in Clause 5 of the Termination Agreement, in accordance with which:

"In the event of breach by the Club of any of its obligations agreed herein, and in particular the obligations arising from clauses 2, 3 and 4 above (indicatively but not exhaustively, de non-completion by the Club of all the required administrative procedures for the de-registration of the Player and/or the delay of full payment of any of the amounts stipulated herein), a penalty of 25% on the amounts stipulated in clause 3 and 4 of the present Agreement shall be imposed against the Club, as a penalty clause for the breach

of the Contract. The parties clearly and unequivocally acknowledge that the agreed penalty is reasonable and proportional in accordance with the standard jurisprudence of FIFA and CAS”.

40. The Chamber noted that, based on the foregoing provision, the Player claimed being entitled to EUR 8,750 net, representing 25% of the overall amount agreed (i.e., EUR 35,000 net). According to the Player, this amount is to be considered proportionate and in line with the jurisprudence of the Chamber. The Chamber equally observed that, on its part, the Club argued that this amount was not proportionate, as it represented more than half of the outstanding amount.
41. In this respect, the Chamber wished to recall that, according to the constant jurisprudence of the Football Tribunal, penalty clauses may be freely entered into by the parties and may be considered acceptable in the event that the pertinent written clause meets certain criteria, such as proportionality and reasonableness. In this regard, in order to determine as to whether a penalty clause is to be considered acceptable, the specific circumstances of the relevant case brought before the Chamber shall be taken into consideration.
42. The Chamber also recalled that the longstanding jurisprudence of the CAS has established that “*A penalty is considered abusive when its amount is unreasonable and clearly exceeds the admissible amount in consideration of the principles of justice and equity*”, and that “*Since the possibility of a reduction affects the contractual freedom of parties, it may only be applied with reservation*”. The CAS has also established that “*When analysing the proportionality of a penalty clause, the creditor’s interest, the seriousness of the breach of the contract, the debtor’s intentional failure, the financial situation of both parties, the economic dependence of the debtor, the disproportion between the damage and the penalty, the debtor’s professional background, and not only the damage actually produced but also the risk of damage to which the creditor has exposed, are to be considered relevant*” (*inter alia*, CAS 2021/A/7727 Yeni Malatyaspor FK v. Issiar Dia).
43. Based on the foregoing, and considering the particularities of the case at hand, and also the total value of the contract at dispute, the Chamber confirmed that a penalty of EUR 8,750 net is, *in casu*, proportionate and in line with the jurisprudence of the Football Tribunal. Consequently, the Chamber concluded that, in accordance with the legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant EUR 8,750 net as contractual penalty.
44. Lastly, the Chamber decided that no interest shall be granted in relation to the penalty (*non bis in idem*).

ii. Compliance with monetary decisions

45. 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.

46. In this regard, the Chamber 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.
47. Therefore, bearing in mind the above, the Chamber 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 creditor, 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.
48. 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.
49. The Chamber 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.

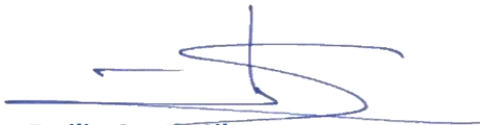
d. Costs

50. 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.
51. Furthermore, 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.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Dorian George Victor Klonaridis, is accepted.
2. The Respondent, Ümraniyespor, must pay to the Claimant the following amount(s):
 - **EUR 15,000 net as outstanding amount** plus 18% interest *p.a.* as from 1 May 2024 until the date of effective payment.
 - **EUR 8,750 net as contractual penalty.**
3. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
4. 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.
5. 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.
6. 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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