

Decision of the Dispute Resolution Chamber

passed on 17 July 2024

regarding an employment-related dispute concerning
the player Faustin Senghor

BY:

Roy VERMEER (The Netherlands), Single Judge

CLAIMANT:

Faustin Senghor, Senegal
Represented by Bışar Özbey

RESPONDENT:

Bitexen Giresunspor, Türkiye
Represented by Ercan Sevdimbaş

I. Facts of the case

1. On 1 September 2022, the Senegalese player Faustin Senghor (hereinafter: *the Claimant* or *the player*) and the Turkish club Bitexen Giresunspor (hereinafter: *the Respondent* or *the club*) concluded an employment contract valid from 1 September 2022 until 31 May 2023 (hereinafter: *the Contract*).

2. Notwithstanding the above, art. 7 of the Contract reads as follows:

"The Parties accept and undertake that the Club has the right to unilaterally prolong the contract for the football season of 2023/2024. For such a unilateral right to be exercised, the Club shall send to the Player and TFF a written notice by a public notary before 31 May 2023.

In case of exercising this right, the Player shall be paid in accordance with the article 6/1 of this Contract herein. The other clauses of this Contract shall be in force.

The Player accepts that the Club has a unilateral right to register this prolongment before TFF without the need of any other transactions and consents".

3. In this context, art. 4 of the Contract established that *"In case the unilateral prolongment right of the Club will be triggered by the Club in accordance with article 7 of this Contract, this Contract will be valid and effective for 2023/2024 football season until 31 May 2024 or any later date on which an official match is played in the respective football season".*

4. As to the remuneration stipulated in favour of the player, art. 6 par. 1 of the Contract reads:

"For 2022/2023 Football Season: net 110.000,00-Euro (One Hundred Ten Thousand Euros)

- *100.000,00-Euro of the abovementioned total amount is to be paid to the Player by the Club as the monthly salary in 10 (ten) equal instalments (10 x 10.000,00-Euro) between the period September 2022 - June 2023. The monthly salaries are to be paid the last day of the relevant months.*
- *10.000,00-Euro of the abovementioned total amount is to be paid to the Player by the Club as sign-on fee in 5 (five) days following the signing date of this Contract.*

For 2023/2024 Football Season (in case this Contract will be prolonged by the Club in accordance with Article 7 of this Contract): net 120.000,00-Euro (One Hundred Twenty Thousand Euros)

- *The abovementioned total amount is to be paid to the Player by the Club as the monthly salary in 10 (ten) equal instalments (10 x 12.000,00-Euro) between the period August 2023 - May 2024. The monthly salaries are to be paid the last day of the relevant months".*

5. On 07 March 2024, the player lodged a claim against the club before the FIFA Football Tribunal. **(FPSD-13960)**.
6. In that context, the player claimed outstanding remuneration in his favour in the amount of EUR 104,000. No reply to the claim was submitted by the club.
7. On 29 May 2024, the Single Judge of the FIFA Dispute Resolution Chamber passed a decision, whose operative part was notified on 3 June 2024 and granted the player the following amounts:
 - *“EUR 20,000 net as outstanding remuneration plus interest p.a. as follows:*
 - *5% interest p.a. over the amount of EUR 10,000 as from 1 May 2023 until the date of effective payment;*
 - *5% interest p.a. over the amount of EUR 10,000 as from 1 June 2023 until the date of effective payment”.*
8. No grounds were requested by the parties following the notification of the abovementioned findings.

II. Proceedings before FIFA

9. On 8 May 2024, the player filed a new claim before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the player

10. According to the player, the club failed to comply with its financial obligations under the Contract as from March 2023.
11. In particular, the player stated that in spite of having unilaterally extended the Contract until 31 May 2024 and notwithstanding the already significant default during the prior season, the club did not pay the player' salaries for the entire 2023/2024 season.
12. The requests for relief of the player, accordingly, were the following:
 - *“Monthly salary of March 2023 10.000,00-Euro*
 - *Monthly salary of April 2023 10.000,00-Euro*
 - *Monthly salary of May 2023 10.000,00-Euro*
 - *Monthly salary of June 2023 10.000,00-Euro*
 - *Monthly salary of August 2023 12.000,00-Euro*
 - *Monthly salary of September 2023 12.000,00-Euro*

- Monthly salary of October 2023 12.000,00-Euro
- Monthly salary of November 2023 12.000,00-Euro
- Monthly salary of December 2023 12.000,00-Euro
- Monthly salary of January 2024 12.000,00-Euro
- Monthly salary of February 2024 12.000,00-Euro
- Monthly salary of March 2024 12.000,00-Euro
- Monthly salary of April 2024 12.000,00-Euro

(...) 148.000.00-Euro (One Hundred Forty-Eight Thousand Euros) NET with its 5% p.a. interest starting from the respective due dates of each warranty fees which are indicated in 3.2. above until the date of effective payment”.

b. Position of the club

13. In response to the claim, the club acknowledged the existence of outstanding remuneration in favor of the player but alleged having suffered extreme financial crisis, thus being prevented from comply with its contractual obligations due to reasons beyond its control.
14. The club therefore limited its plea to a request for further time to remedy the breach.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

15. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *the 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 8 May 2024 and submitted for decision on 17 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.
16. Subsequently, 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 lit. b) of the Regulations on the Status and Transfer of Players (June 2024 edition), the Single Judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Senegalese player and a Turkish club.
17. 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 (June 2024 edition), and considering that the present claim was lodged on 8 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

18. 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 Transfer Matching System (TMS).

c. Merits of the dispute

19. 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

20. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the club did not challenge the existence of outstanding remuneration in favour of the player, nor the quantum pleaded by the latter.
21. Furthermore, the Single Judge observed that the player provided undisputed evidence of the Club's extension of the Contract, until the end of the 2023/2024 season in Türkiye, *i.e.*, 31 May 2024.
22. In this context, the Single Judge acknowledged that his 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 latter had a valid justification for not having complied with its financial obligations.
23. In this respect, the Single Judge emphasized 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, absent such evidence and any reasonable justification by the club for not having complied with the terms of the contract, the Single Judge decided that its position could not be upheld.

24. Accordingly, the Single Judge ascertained that during the contractual period between 1 March 2023 and 31 May 2024, the player would be entitled to a total remuneration of EUR 148,000 net.
25. In this context, the Single Judge however recalled the previous decision passed by the Single Judge of the DRC on 29 May 2024, whereby the player had already been granted the amounts corresponding to the unpaid salaries of April 2023 and May 2023.
26. The Single Judge therefore confirmed that said amounts could not be granted twice based on the principle of *res judicata*.
27. On account of the above, the Single Judge determined that the outstanding remuneration in favour of the player correspond to the following salaries:
 - March 2023 in the amount of EUR 10,000;
 - June 2023 in the amount of EUR 10,000;
 - August 2023 in the amount of EUR 12,000;
 - September 2023 in the amount of EUR 12,000;
 - October 2023 in the amount of EUR 12,000;
 - November 2023 in the amount of EUR 12,000;
 - December 2023 in the amount of EUR 12,000;
 - January 2024 in the amount of EUR 12,000;
 - February 2024 in the amount of EUR 12,000;
 - March 2024 in the amount of EUR 12,000;
 - April 2024 in the amount of EUR 12,000;
28. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the club is liable to pay to the player the total amount of EUR 128,000 net.
29. In addition, taking into consideration the player's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the player interest at the rate of 5% p.a. on the outstanding amounts as from the respective due dates until the date of effective payment.

ii. Compliance with monetary decisions

30. 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.

31. 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.
32. Therefore, bearing in mind the above, the Single Judge decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, 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 Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
33. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
34. 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

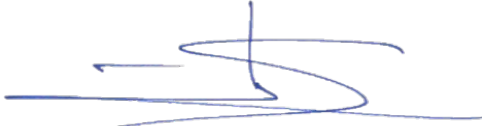
35. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
36. 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.
37. Lastly, the Single Judge concluded his 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, Faustin Senghor, is accepted insofar as it is admissible, is accepted insofar it is admissible.
2. The Respondent, Bitexen Giresunspor, must pay to the Claimant the following amount(s):
 - **EUR 128,000 net as outstanding remuneration** plus interest *p.a.* as follows:
 - 5% interest *p.a.* over the amount of EUR 10,000 as from 1 April 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 10,000 as from 1 July 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 12,000 as from 1 September 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 12,000 as from 1 October 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 12,000 as from 1 November 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 12,000 as from 1 December 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 12,000 as from 1 January 2024 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 12,000 as from 1 February 2024 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 12,000 as from 1 March 2024 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 12,000 as from 1 April 2024 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 12,000 as from 1 May 2024 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.
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

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777