

Decision of the Dispute Resolution Chamber

passed on 5 July 2024

regarding an employment-related dispute concerning
the player Herolind Shala

BY:

Michele COLUCCI (Italy)

CLAIMANT:

Herolind Shala, Albania and Norway

Represented by Talat Emre Kocak

RESPONDENT:

Erzurumspor FK, Türkiye

I. Facts of the case

1. On 21 July 2023, the DRC decided a dispute between the Albanian and Norwegian player Herolind Shala (hereinafter: the Claimant or the Player) and the Turkish club Erzurumspor (hereinafter: the Respondent or the Club) awarding the Player the amount of EUR 75,000 plus interest (Ref. Nr. FPSD-10473, hereinafter: the DRC decision) resulting from a previous contractual relationship.
2. On 12 September 2023, the Parties signed an employment contract (hereinafter: Employment Contract) valid as from 12 September 2023 until 30 June 2024.
3. In accordance with the Employment Contract, the Respondent undertook to pay to the Claimant *inter alia* a monthly salary of EUR 14,000.
4. On 12 September 2023, the Parties concluded a settlement agreement (hereinafter: Settlement Agreement), in order to settle the debt of the Club resulting from the DRC decision (cf. pt. 1 above). According to said Settlement Agreement, the Respondent undertook to pay the Claimant the following amounts in instalments as follows:
 - EUR 15,000 on 30 September 2023;
 - EUR 15,000 on 30 October 2023;
 - EUR 15,000 on 30 November 2023;
 - EUR 15,000 on 30 December 2023;
 - EUR 15,000 on 30 January 2024.
5. By correspondence dated 1 May 2024, the Claimant put the Respondent in default of payment of EUR 43,000, corresponding to the monthly salaries of March and April 2024 (2x EUR 14,000 under the Employment Agreement), plus EUR 15,000 as the last instalment of the Settlement Agreement. The Claimant requested payment within 15 days in order to remedy the default.
6. On 17 May 2024, the Claimant terminated the contract with the Club arguing outstanding remuneration.

II. Proceedings before FIFA

7. On 21 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**
8. In his claim, the Claimant argued that the Respondent failed to pay his outstanding remuneration even after the default notice.

9. On account of the above, he argued having just cause to terminate the contract on 17 May 2024.
10. The requests for relief of the Claimant, were the following:

Amounts claimed from the Employment Contract:

- EUR 28,000 as outstanding salaries from the (March/April 2024) plus interest of 5% as of the due dates;
- EUR 28,000 as compensation for breach of contract plus interest of 5% as of the due dates;
- EUR 42,000 as additional compensation plus interest of 5% as of the due dates.

Amounts claimed from the Settlement Agreement:

- EUR 15,000 as outstanding instalment of the settlement agreement, plus interest of 5% as of the due dates.

b. Position of the Respondent

11. In its reply, the Respondent rejected the claim.
12. The Respondent held having financial difficulties due to the economic situation in Türkiye.
13. Furthermore, the Respondent maintained that no additional compensation shall be granted.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

14. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as 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 21 May 2024 and submitted for decision on 5 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.
15. 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 Albanian and Norwegian player and a Turkish club.

16. 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 21 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

17. 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

18. His 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

19. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that this is a claim of a player against a club for termination of contract based on outstanding remuneration from: (i) the Employment Contract and (ii) the Settlement Agreement.
20. 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 Respondent and, if so, whether, regarding the Employment Contract, the formal pre-requisites of art. 14bis of the Regulations had in fact been fulfilled.
21. The Single Judge 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).

22. The Single Judge consequently recalled that according to the Claimant, he terminated the contract with just cause due to outstanding remuneration. In this respect, the Single Judge noted that the Claimant claimed not having received his remuneration corresponding to:

(i) Employment Contract:

- EUR 28,000 as two outstanding salaries (March/April 2024).

(ii) Settlement Agreement:

- EUR 15,000 as outstanding instalment as from 30 January 2024.

23. Furthermore, the Single Judge observed that the Claimant provided written evidence of having put the Respondent in default on 1 May 2024, i.e. at least 15 days before terminating the contract on 17 May 2024.

24. On the other hand, the Single Judge noted that the Respondent rejected the claim.

25. In this context, the Single Judge pointed out 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, noting that the Respondent did not contest the outstanding remuneration.

26. Furthermore, no reasonable justification was presented by the Respondent for not having complied with the terms of the contract. In particular, the Respondent failed to provide convincing evidence on how the club was affected by its argumentation of alleged financial difficulties due to the transfer bans imposed to Turkish clubs, alongside with the insolvency of the Respondent in recent years.

27. Thus, the Single Judge concluded that the Claimant had a just cause to unilaterally terminate his Employment Contract based on article 14bis of the Regulations, according to which: *"In the case of a club unlawfully failing 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)."*

28. Finally, the Single Judge turned its attention to the outstanding amount from the Settlement Agreement and recalled, that equally, no evidence nor justification was provided by the Respondent proving the payment of the amounts claimed as outstanding by the Claimant. Bearing in mind the basic legal principle of *pact sunt servanda*, which in

essence means that agreements must be respected by the parties in good faith, the Single Judge concluded that the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the Settlement Agreement concluded between the parties, namely EUR 15,000.

ii. Consequences

29. Having stated the above, the members of the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
30. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the Player, are equivalent to two salaries under the Employment Contract, amounting EUR 28,000 (2x EUR 14,000, March and April 2024), as well as EUR 15,000 corresponding to the last instalment under the Settlement Agreement as from 30 January 2024.
31. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the contract at the moment of the termination, i.e. EUR 43,000 corresponding to:
- (i) **Employment Contract:**
- EUR 28,000 as outstanding salaries (March/April 2024).
- (ii) **Settlement Agreement:**
- EUR 15,000 as outstanding instalment as from 31 January 2024.
32. In addition, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from the day after the due dates, as follows:
- EUR 14,000, as outstanding remuneration from the **Employment contract** plus 5% interest *p.a.* as from 1 April 2024 until the date of effective payment;
 - EUR 14,000 as outstanding remuneration from the **Employment contract** plus 5% interest *p.a.* as from 1 May 2024 until the date of effective payment;
 - EUR 15,000 as outstanding remuneration from the last instalment of the **Settlement Agreement** plus 5% interest *p.a.* as from 31 January 2024 until the date of effective payment.

33. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable to the Player by the Club in the case at stake. In doing so, the Single Judge 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 player 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.
34. In application of the relevant provision, the Single Judge held that it first of all had to clarify as to 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. In this regard, the Single Judge established that no such compensation clause was included in the Employment Contract at the basis of the matter at stake.
35. As a consequence, the Single Judge determined that the amount of compensation payable by the Club to the Player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Single Judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
36. Bearing in mind the foregoing as well as the claim of the Player, the Single Judge proceeded with the calculation of the monies payable to the Player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Single Judge concluded that the amount of EUR 28,000 (i.e. 2x EUR 14,000 May and June 2024) serves as the basis for the determination of the amount of compensation for breach of contract.
37. In continuation, the Single Judge verified as to whether the Player 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 DRC 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. In this regard, the Player was not able to mitigate any damages because he remained unemployed during the relevant period.
38. The Single Judge referred to art. 17 par. 1 lit. ii) of the Regulations, according to which, in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.

39. In this respect, the Single Judge to award the player compensation for breach of contract in the amount of EUR 28,000, i.e. 2 times EUR 14,000 (May and June 2024), as the residual value of the Employment Contract.
40. Lastly, 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 on said compensation at the rate of 5% pa. as of 17 May 2024, until the date of effective payment.

iii. Compliance with monetary decisions

41. 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.
42. 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.
43. 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.
44. 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.
45. 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

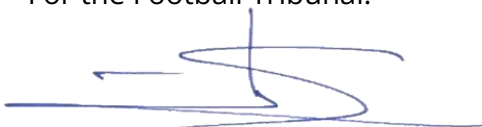
46. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.

47. 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.
48. 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, Herolind Shala, is partially accepted.
2. The Respondent, Erzurumspor FK, must pay to the Claimant the following amount(s):
 - **EUR 14,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 April 2024 until the date of effective payment;
 - **EUR 14,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 May 2024 until the date of effective payment;
 - **EUR 15,000 as outstanding remuneration** plus 5% interest *p.a.* as from 31 January 2024 until the date of effective payment;
 - **EUR 28,000 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 17 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

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