

# Decision of the Dispute Resolution Chamber

passed on 4 July 2024

regarding an employment-related dispute concerning the player  
Mbaye Hamadi Niang

**BY:**

**Frans DE WEGER (The Netherlands)**, Chairperson  
**Oleg ZADUBROVSKIY (Russia)**, member  
**Stefano SARTORI (Italy)**, member

**CLAIMANT:**

**Mbaye Hamadi Niang, France**  
Represented by Nihat Güman

**RESPONDENT:**

**Yukatel Adana Demirspor A.S., Türkiye**  
Represented by Umur Varat

## I. Facts of the case

1. On 8 August 2023, the French player Mbaye Hamadi Nyang (hereinafter: the *Claimant* or the *Player*) and the Turkish club Yukatel Adana Demirspor A.S. (hereinafter: the *Respondent* or the *Club*) concluded an employment agreement (hereinafter: the *Employment Agreement*) valid from the aforementioned date until 30 June 2025.
2. Pursuant to Clause 3.1.2) of the Employment Agreement, the Player was entitled to receive a yearly salary of EUR 900,000 for the 2023/2024 season, divided into 10 equal monthly salaries of EUR 90,000 payable between September 2023 and June 2024. Furthermore, point 7 of the Special Provisions under the Employment Agreement stipulates that *"Each monthly salary shall be paid to the Player until the last day of the month following the month, for which the payment is made."*
3. Subsequently, on 26 January 2024, the parties terminated the Employment Agreement by signing a mutual termination agreement (hereinafter: the *Mutual Termination Agreement*).
4. Clause 2) of the Mutual Termination Agreement states, in relevant part, as follows:

*"Player sent a notice on 09.12.2023 and granted 15 days to Club to fulfil its obligations. Within the given time Club fulfilled all its obligations. After Player left the city starting from 23 December 2023 without any permission and missed two official league matches and trainings, Club imposed fines regarding to violations. First fine was given amount to 175.000 Euro on 02.01.2023 and second was given 70.000 Euro on 15.01.2024. Even those were not due, December 2023 salary and half of the January 2024 (between 01.01.2024 and 15.01.2024) salary has not been paid yet on this termination date, amount of 137.000 Euro. This Mutual Termination Agreement has been signed between the parties regarding to Player's request in return of his transfer to Italian Club, Empoli FC.*

*By virtue of this Mutual Termination Agreement the Parties declare that all financial relations between them with regard to the employment contract and any kind of Protocols or agreements that signed between the Parties (i.e., as advance payment, monthly salary, bonus payments, guaranteed bonuses, additional payments, compensation or in any other name) are finally and completely resolved. With signing of this Agreement, Player waives from monthly salaries (including December 2023 and half of the January 2024 salaries), accommodation, car expenses, guaranteed bonuses, advance payments, guarantee bonuses and bonus payments written on the Contract. Club waives from its wights[sic] regarding to fines given against Player. To be clear in case of conditions written on the Contract shall happen after the termination both parties shall not demand anything from the Club, Player waived all the rights written in the Contract such as guaranteed payments, fines, advance payments, monthly salaries and bonus payments, accommodation and other expenses, including any kind of compensation."*

5. Furthermore, the first paragraph of Clause 3) of the Mutual Agreement Termination provides:

*"With signing of this agreement both parties accepts[sic] and declares that they both have no receivable remaining from each other according to Professional Football Player's Transfer Contract any Protocol or any kind of agreement signed between the Parties. Player can not request for any kind of deduction against the amount written on Article 3 of this Agreement. After the Player's full and payments on time regarding to Article 3, both parties agree that they do not have any request, right or right to file a lawsuit against each other."*

6. On the date of the Mutual Termination Agreement, and in line with the salary payment dates stipulated in the Employment Agreement, the Player had not been paid the salary for December 2023 and the 26 days of January 2024 in which he was still under the Club's employ. According to the second paragraph of Clause 2) of the Mutual Termination Agreement, these salaries amounted to EUR 137,000.
7. According to the information consulted on the FIFA Transfer Matching System (hereinafter: *TMS*), the Claimant was registered on 31 January 2024 with the Italian club Empoli FBC, SPA (hereinafter: *Empoli*). The information on TMS demonstrates that the Claimant was transferred to Empoli in exchange for a transfer fee, pursuant to the transfer agreement between the Respondent, Empoli, and the Claimant dated 30 January 2024.
8. On 19 February 2024, the Claimant put the Respondent in default of payment of his outstanding salaries for December 2023 and January 2024, which he calculated to be EUR 168,000 net, setting a time limit of 10 days to remedy the default.
9. In its reply to the default notice, also dated 19 February 2024, the Respondent indicated that, *"In accordance with the mutual termination agreement signed between you and the Club on 26 January 2024, we would like to state that you accepted that you do not have any receivables or rights under any name before the Club."*

## **II. Proceedings before FIFA**

10. On 1 March 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**

11. According to the Claimant, due salaries cannot be waived, in line with art. 341 par. 1 of the Swiss Code of Obligations (hereinafter: *SCO*). The Player argued that the waiver included in the Mutual Termination Agreement was null and void as it violated mandatory provisions of Swiss law.

12. The Claimant also referenced FIFA and CAS jurisprudence prohibiting the waiver of due salaries.

13. The requests for relief of the Claimant were the following:

*"As we have explained in detail above, we kindly request from FIFA Football Tribunal collection of*

- *168,.000 EUR with interest %5 from due dates of each payment (90.000 EUR on 31 December 2023 and 78.000 EUR on 26 January 2024) respectively"*

**b. Position of the Respondent**

14. According to the Respondent, the Mutual Termination Agreement consisted of a genuine transaction whereby both parties validly waived their respective rights in exchange for the other party's waiver.

15. Specifically, the Respondent notes that, prior to the Mutual Termination Agreement, the Respondent had imposed several fines on the Player, amounting to EUR 245,000. They related to the following disciplinary decisions in accordance with the Professional Football Team Disciplinary Regulations for the 2023/2024 season:

- Decision from the Board of Directors from 28 December 2023 – as of 23 December 2023, it was determined the Claimant left the city and country without permission and did not attend the training sessions or match against Antalyaspor on 24 December 2023. For leaving the city without permission and not participating in competition, it was decided the Claimant would be sanctioned with a fine of EUR 175,000. The Respondent argued that this amount should be set off from the Claimant's current receivables, and, if insufficient, it should be deducted against future payments.
- Decision from the Board of Directors from 11 January 2024 – on the basis of the Disciplinary Decision issued on 28 December 2023, as well as the fact that the Claimant had not returned to the city and did not attend training sessions or the match against Basaksehir FK, the fact that he gave an interview against the Respondent to the press, and that he was granted a time limit to file his statement of defence but refused to do it, the Board of Directors finally imposed a fine of EUR 70,000. The Respondent argued that this amount should be set off from the Claimant's current receivables, and, if insufficient, it should be deducted against future payments.

16. According to the Respondent's explanations, the Claimant had already attempted to unjustly terminate his Employment Agreement and had put the Respondent in default

pursuant to art. 14bis FIFA RSTP on 9 December 2023 for overdue monthly salaries, for a total amount of EUR 232,000 net corresponding to salaries from September, October and November 2023. In this notice, the Claimant granted the Respondent 15 days to satisfy the overdue amounts, failing which the Claimant would unilaterally terminate the Employment Agreement with just cause.

17. The Respondent answered on 13 December 2023 disputing the Player's allegation. According to the Respondent, up to that date it had disbursed a total of EUR 399,501.33 (out of a total EUR 433,000 under the Employment Contract) to the Player/on behalf of the Claimant as salary, advance payments, accommodations, and flight tickets, and the Claimant could only request EUR 33,498.67 as outstanding amounts. Therefore, there was no just cause for terminating the Employment Agreement.
18. On 15 December 2023, the Claimant's lawyer sent correspondence to the Respondent, *inter alia*, requesting payment receipts for certain claimed amounts.
19. On 20 December 2023, the Respondent responded with additional payment receipts and explanations. According to the Respondent, up to that date it had disbursed a total of EUR 370,444.56 to and on behalf of the Claimant as salary, advance payments, and flight tickets, and the Claimant could only request EUR 62,555.44 as outstanding amounts.
20. The Respondent sent another communication to the Claimant's lawyer on 25 December 2023 stating that the Claimant had left the city and the country without permission and was requested to provide his statement of defense within 48 hours via email to the Respondent, otherwise it would be deemed he had waived his right to a defense.
21. The Respondent further noted that, on his part, the Claimant provided medical reports to the Respondent to establish that he was being treated for an illness on the relevant dates. However, the Respondent sustains that even if it were to accept the medical report evidence provided by the Claimant as true, the Claimant never contested the disciplinary proceeding though he was given the opportunity to do so. Therefore, it was false that the main reason for imposing the penalties was that the Claimant had requested his remuneration, as the Claimant sustained. Rather, the Claimant had left Turkey without permission and missed training sessions and the match against Antalyaspor on 24 December 2023.
22. On the same date of the First Disciplinary Decision (28 December 2023), the Player sent two notifications of interruption of work from the French Caisse Nationale D'Assurance Maladie covering the periods between 23 through 25 December 2023 and 27 December 2023 through 1 January 2024. The Respondent considered this as proof that the Claimant had left the country without permission and was still committing a violation of his Employment Agreement and the Professional Football Team Disciplinary Regulation, now for a second time.

23. Also on 28 December 2023, the matter was once again referred to the Respondent's disciplinary bodies and the Claimant was granted 48 hours to provide a statement of defense. In parallel, the Respondent also averred that the assessment from the its doctor indicated that the Claimant's alleged illness did not constitute an obstacle for travel and the Claimant was asked to return to the Club within 48 hours, where his treatment would continue. Furthermore, the Respondent sent a letter to the hospital in France where the medical reports came from in order to ascertain their veracity.
24. On 3 January 2024, the Claimant gave an interview to the French media where he stated that he wanted to leave the Respondent and had apparently contacted other clubs in other countries to that effect, and on 3 and 5 January 2024, the Player missed training sessions.
25. On 6 January 2024, the Respondent sent a new notice to the Claimant and requested he provide his statement of defense in light of the disciplinary infringements stated therein (leaving Turkey without permission, missing trainings and matches against Antalyaspor and Basksehir FK, and speaking out against the Respondent in an interview). The Respondent highlighted that the Claimant neither provided a statement of defense nor returned to Turkey. Additionally, the Respondent noted the Claimant missed further training sessions on 8 and 9 January 2024.
26. On 11 January 2024, the Claimant's lawyer emailed the Respondent two medical leave certifications covering the period between 27 December 2023 and 1 January 2024 (which had already been shared with the Club) and the period between 1 January 2024 and 9 January 2024. The Respondent noted these were sent without explanations for the other matters (continued absence without permission, content of interview).
27. Moreover, the Respondent indicated that, contrary to the Claimant's claim, the salaries outstanding would in any case amount to EUR 137,000.
28. In light of the foregoing, the Respondent sustained that there was an appropriate equivalence between the parties' reciprocal concessions (stating the Respondent's concessions were even greater than the Player's concessions). The Respondent argued this case is an exception to the general rule: waivers from salaries and other payments for work already performed by a player can be accepted as valid and binding when they concern a settlement between the parties and not a unilateral, one-sided waiver by the player. In this sense, the Respondent cited DRC and CAS jurisprudence for support.
29. The Respondent further contended that the Claimant, who was advised by a lawyer at every moment, was acting in bad faith by seeking to ignore the clear terms and reasons for the Mutual Termination Agreement.
30. Aside from the above, the Respondent highlighted that part of the salary corresponding to December 2023, specifically as of 23 December 2023, and the January Salary were not

actually due because the Claimant never returned to Adana and, consequently, would not be entitled to claim salaries for services never rendered to the Respondent.

31. Finally, the Respondent also highlighted that the monthly salaries are not due until the last day of the following month. Accordingly, the Claimant was incorrectly claiming interest as from 31 December for the December salary and as from 26 January for the January salary.
32. In view of the foregoing, the Respondent requests that the Player's claim be rejected.

#### **c. Rejoinder of the Claimant**

33. In his rejoinder, the Claimant noted that the Respondent recognized that he had EUR 168,000 outstanding.
34. The Claimant also reiterated that waiving his salaries is null and void pursuant to the SCO. The waiver contained in the Mutual Termination Agreement was drafted by the Respondent and imposed on the Claimant.
35. Furthermore, he argued that the penalties imposed on him were also null and void as the Respondent did not respect the Claimant's defense or the medical report he submitted, and simply applied the penalties as an excuse. In support, the Claimant attached the image of the medical report diagnosing "food poisoning" ("*intoxication alimentaire*") and an explanatory note from his doctor from the same date and indicating the Claimant had "acute gastroenteritis" ("*gastroentérite aiguë*").
36. The Claimant further argued that the Respondent had never made regular payments to the Claimant, and that the main reason for imposing penalties upon him was that the Player had put the Respondent in default pursuant to art. 14bis FIFA RSTP on 9 December 2023 for overdue monthly salaries, for a total amount of EUR 232,000 net corresponding to salaries from September, October and November 2023. In this notice, the Claimant granted the Respondent 15 days to satisfy the overdue amounts, failing which the Player would unilaterally terminate the Employment Agreement with just cause.
37. The Claimant reiterated his prayers for relief as submitted in his claim.

#### **d. Final comments of the Respondent**

38. In its final comments, the Respondent maintained that the disciplinary proceedings opened against the Claimant were never contested nor were the decisions ever appealed. Therefore, those uncontested disciplinary proceedings were real and there was an appropriate equivalence between the parties' reciprocal concessions. There is neither a deduction of salaries nor a simple waiver of salaries, but a balanced transaction.

39. The Respondent also raised an objection that it was not the correct moment to discuss the validity of the mutual concessions considered in the Mutual Termination Agreement that the Claimant freely accepted. Nonetheless, it once again highlighted the sequence of events leading up to the two disciplinary decisions imposing fines as well as the arguments already developed in its answer to the claim.
40. In sum, the Respondent requested once again that *"the Dispute Resolution Chamber [...] fully reject the Player's Claim."*

### III. Considerations of the Dispute Resolution Chamber

#### a. Competence and applicable legal framework

41. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *the DRC* or *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 March 2024 and submitted for decision on 4 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.
42. 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), it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an nationality player and a nationality club.
43. 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 March 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

44. 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 TMS.



### **c. Merits of the dispute**

45. 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**

46. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute the validity of a player's waiver of outstanding salaries with the signature of a mutual termination agreement.

47. In this context, the Chamber acknowledged that its task was to determine, based on the evidence presented by the parties, whether the Mutual Termination Agreement was valid and binding between the parties, or, were that not the case, what are the consequences.

48. The Chamber's first observation from the wording of the Mutual Termination Agreement was that it indeed included a clear and unequivocal waiver by the Claimant of the December 2023 and part of the January 2024 salaries under the Employment Agreement. Therefore, the Chamber determined there was no dispute that, to date, those salaries were not paid.

49. Notwithstanding the above, the Chamber also recalled that the mere signature of an agreement is not sufficient to ensure the enforceability of its contents. In particular, the relevant FIFA and CAS jurisprudence establish that, in concrete terms, to assess whether a transaction is permissible, the court or deciding body is required to conduct a balancing of interests, checking whether the mutual claims waived by each party are of comparable value. Put differently, whether there is an appropriate equivalence between the parties' reciprocal concessions, especially when a waiver is included in the relevant document.

50. In that regard, the Chamber also recalled that the first conclusion that follows from the CAS jurisprudence is that waiving of salary for work already performed cannot be validly made (*cf.* CAS 2020/A/6727 and CAS 2016/A/4582). There may be cases in which a waiver of remuneration could be considered, but again this is subject to the player being granted an equivalent consideration in exchange for such waiver.

51. Therefore, the Chamber determined that, in this case, it had to closely examine the purported equivalence of the concessions made by each party to determine if there is indeed a valid waiver.

52. In the Claimant's case, the Chamber noted that he claimed outstanding salaries for the months of December 2023 and up until 26 January 2024, during which time he was still effectively employed by the Respondent. Pursuant to the Employment Agreement, the Player was due 10 equal monthly installments of EUR 90,000 between September 2023 and June 2024. Thus, the Player calculates that the salaries covered by the waiver include EUR 90,000 for December 2023 and EUR 78,000 for part of January 2024. However, the Respondent sustained the outstanding salaries amounted to EUR 137,000, which was precisely the amount reflected in the Mutual Termination Agreement signed between the parties.
53. Conversely, the Respondent sustained that it waived EUR 245,000 in fines deriving from the First and Second Disciplinary Decisions. In this respect, the Chamber underscored that both decisions and the fines imposed were explicitly referenced in the Mutual Termination Agreement, as was the fact that the Mutual Termination Agreement was signed between the parties *"regarding the Player's request in return of his transfer to Italian Club, Empoli FC"*.
54. Additionally, the Chamber took note of the fact that the Claimant did not allege that he did not receive the First and Second Disciplinary Decisions, but that they were imposed as an excuse and the Respondent did not respect the Player's defense or medical reports. Furthermore, the Chamber underscored that the Claimant, who was represented by legal counsel at the time, was provided opportunities to file statements of defense in the disciplinary proceedings. However, the evidence in the file establishes that the Claimant limited his defense to providing the medical reports in the file, and did not appear to file a protest or appeal against the First or Second Disciplinary Decisions. Therefore, the Chamber observed that the Claimant did not challenge either disciplinary decision in any material respect.
55. Furthermore, the Chamber took note of the fact that the Claimant never denied that he left Turkey without permission at the end of December 2023, as the Respondent averred, or that he never returned to Turkey, that he missed several matches and training sessions, and that he made it public knowledge that he wished to leave the Respondent. Moreover, the Chamber recalled that the Mutual Termination Agreement expressly recognized this sequence of events in its Clause 2), entitled *"Scope of the Contract."*
56. Finally, and for the sake of completeness, the Chamber highlighted that the Claimant has not advanced any arguments suggesting that he signed the Mutual Termination Agreement with reservations or under protest or duress. Indeed, it would appear from his subsequent contractual situation that the Claimant was able to fulfil his intention of leaving the Respondent and joining a club in Italy, Empoli, 4 days after signing the Mutual Termination Agreement.
57. Therefore, under the specific circumstances of this case as evidenced in the file, the Chamber reasoned that the parties were fully aware of the rights each party possessed and, therefore, of the concessions being made on each side in order to reach the Mutual

Termination Agreement. As such, the Chamber concluded that these concessions appeared to be both reciprocal and balanced, reflecting the parties' will, and held that the waiver contained in the Mutual Termination Agreement was valid and binding.

58. In consideration of the above, the Chamber recalled once again that the Player signed the Mutual Termination Agreement on 26 January 2024 and almost a month later, and after joining a new club, claimed the salaries that were the object of an express waiver within the Mutual Termination Agreement. By virtue of the legal principles of *pacta sunt servanda*, the Player must abide by his previous contractual commitment.

#### ii. Consequences

59. Having stated the above, the members of the Chamber determined that the Claimant's claim shall be rejected in its entirety.

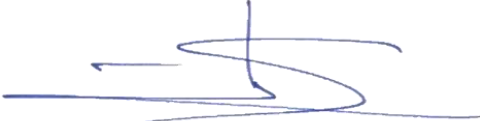
#### d. Costs

60. 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.
61. 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.
62. Lastly, the Chamber 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, Mbaye Hamadi Niang, is rejected.
2. 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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