Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 17 January 2020,

in the following composition:

Omar Ongaro (Italy), Deputy Chairman
Stefano Sartori (Italy), member
José Luis Andrade (Portugal), member

on the claim presented by the player,

Ahmed Abed, Israel
represented by Mr Nir Inbar

as *Claimant*

against the club,

Giresunspor Kulübü Dernegi, Turkey
represented by Mr Ercan Sevdimbas

as *Respondent*

regarding an employment-related dispute
between the parties

I. Facts of the case

1. On 29 January 2018, the Israeli player, Ahmed Abed (hereinafter: *the player*), and the Turkish club, Giresunspor Kulübü Dernegi (hereinafter: *the club*) signed an employment contract (hereinafter: *the contract*) valid as from the date of signature and for "*the football seasons of 2017/2018 and 2018/2019*".

2. Based to the information available in the Transfer Matching System (TMS), the 2018-2019 sporting season in Turkey ended on 31 May 2019.

3. In accordance with art. 6 of the contract, the player was, *inter alia*, entitled to receive the following remuneration:

   The total amount of EUR 100,000 for the 2017-2018 sporting season, broken down as follows:
   (1) EUR 12,500 "*as salary after the bank account is opened*";
   (2) EUR 12,500 "*on the 1st of March 2018 as salary*";
   (3) EUR 12,500 "*on the 1st of April 2018 as salary*";
   (4) EUR 12,500 "*on the 1st of May 2018 as salary*";
   (5) EUR 50,000 "*on the 30th of September 2018 as signing fee*".

   The total amount of EUR 250,000 for the 2018-2019 sporting season, broken down as follows:
   (1) Ten monthly salaries of EUR 17,500 each, as from August 2018 until May 2019, payable at the end of each month;
   (2) EUR 25,000 "*as signing fee*", payable on 28 February 2019;
   (3) EUR 25,000 "*as signing fee*", payable on 30 April 2019;
   (4) EUR 25,000 "*as signing fee*", payable on 31 May 2019.

4. On 9 July 2018, the player signed a document titled "*Irrevocable letter of undertaking and confirmation of waiver, release and disposal of claims*" (hereinafter: *the termination agreement*), which was also signed and stamped by the club under the statement "*we hereby acknowledge receipt of player's waiver + approve our obligations in accordance with this waiver*".

5. The termination agreement reads as follows:

   "*1. I agree to terminate the employment contract signed 29 January 2018, between the parties in order to allow me to register in another football club.*

   2. I confirm that subject to the final payment as defined herein, [the club] *shall have no obligations towards me whatsoever, and in particular with respect to both seasons 2017/18 and 2018/19.*

   3. I hereby finally, absolutely and irrevocably represent, confirm and undertake that subject to the receipt of the final payment, as defined herein, [the club] *has paid me*

all past, present and future amounts and or other benefits due to me pursuant to the agreement and to any agreement (including all benefits and/or grants and/or bonuses etc.), and/or law in connection with my employment for season 2017/18 and 2018/19.

4. For the purpose of this Waiver, the term final payment shall refer to EUR 75,000 in addition to return of 10% of tax rate (as specified in Article 6 in the employment agreement) if to be imposed on the player from Israeli tax authorities. The final payment shall be paid in two instalments:

4.1 First instalment of EUR 25,000 shall be paid within 1 day upon signing this waiver.
4.2 Second instalment of EUR 50,000 shall be paid no later than 30 September 2018.
4.3 Payment of tax return (if applicable) within 7 days upon providing [the club] *the required liability under Israeli tax authorities' instructions.*

5. Subject to the payment of the final payment I do not and will not have any suits, demands and/or claims of any kind whatsoever against [the club] *and/or its shareholders and/or its representatives and/or others in any way acting on its behalf, and I shall not have any suits, demands or claims of any kind in connection with the term of my employment with* [the club] *for seasons 2017/18 and 2018/19.*

6. I hereby agree to indemnify, defend and hold [the club] *harmless from and against any and all suits, claims or demands on my behalf. I hereby represent, confirm and undertake to refrain from any legal action against* [the club] *or anyone on its behalf which concerns any prima facie rights deriving from my employment with [the club] or any breach of any of my undertakings under this waiver. I undertake not to prejudice* [the club]*'s name and/or the reputation of any of its owners, managers, professional staff members and/or any other functionary thereof.*

7. I hereby acknowledge that this waiver shall become effective upon my signature. And I hereby declare and confirm that I have signed this waiver of my own free will, after having paid the matter though consideration and discretion and without any pressure, coercion or undue influence, that it was explained to me to my satisfaction".

6. On 9 October 2018, the player put the club in default of payment of the amount of EUR 50,000, corresponding to the second instalment due under the termination agreement, granting the club a deadline of 15 days to comply with its financial obligations. In his default notice, the player stated that "*on 9 July 2018, the player and* [the club] *have mutually agreed upon termination of player's employment agreement in the club (hereinafter the termination) subject to club's final payment of player's overdue salaries as stipulated in article 4 to the termination". What is more, the player informed the club that "in case the club would not fulfil its obligations under the termination, it may itself be deemed terminated, allowing the player to demand his remedies back under the employment [contract]".*

7. On 22 January 2019, the Claimant lodged a claim against the Respondent before FIFA requesting outstanding remuneration and compensation for breach of contract in the

total amount of EUR 235,000, plus 5% interest *p.a*. "*as from the date club is found to be in breach of the* [contract]", broken down by the Claimant as follows:

(1) EUR 50,000 as outstanding salaries for the 2017/18 sporting season;
(2) EUR 80,000 as "*mitigated compensation*", corresponding to the "*difference between the 2018/19 season's value of the player's employment contract in his new club (EUR 170,000) to the value of the 2018/19 season's employment* [contract] *signed by the parties (EUR 250,000)*";
(3) EUR 105,000 as additional compensation, corresponding to the sum of six monthly salaries in the amount of EUR 17,500 each, on the basis of art. 17 of the Regulations on the Status and Transfer of Player. In particular, the player deemed that "*this case , by every standard, shall be considered as egregious circumstances case*" taking into consideration that the club "*completely avoided its obligations [towards] the player shortly after signing [him], enforced him to find a new club, mislead him to sign the termination in order to receive his outstanding salaries of 2017/18, completely abandoned these further obligations and later brutally ignored the player*".
(4) In addition, the player also requested from the club the payment of EUR 10,000 "*to help the payment of his legal fees and costs*".

8. In his claim, the player affirmed that the club failed to pay him the amount of EUR 50,000, corresponding to the second instalment due under the d termination agreement despite having put the latter in default of payment on 9 October 2018.

9. In this regard, the player referred to termination agreement and claimed that "*art. 2, 3 and 5 of the termination subjected the validity of the termination to the fulfilment of the actual payments by the club to the player under article 4 of the termination*".

10. In this context, the player affirmed that "*the club failed to fulfil its obligations under the termination which is deemed to be null and void*" and that "*hence, the club is liable towards the player under its obligations in the employment* [contract]".

11. More specifically, the player deemed that the club "*breached without just cause the termination agreement*" and that the employment contract "*was terminated in just cause for non-payment of outstanding salaries under art. 14bis of the RSTP*".

12. In this regard, the player considered that since the club failed to pay him "*four monthly salaries of 2017/18 season on their due dates*" and since it put the club in default on 9 October 2018, he had a just cause to terminate the employment contract.

13. In its reply to the claim, the club stated that the parties signed a termination agreement on 9 July 2018, by means of which the employment contract was terminated by mutual consent of the parties.

14. Furthermore, the club affirmed that the player cannot invoke art. 14bis and art. 17 of Regulations on the Status and Transfer of Players, considering that both parties agreed to mutually terminate the contract on 9 July 2018.

15. In this regard, the club rejected the player's allegations that the termination agreement should be considered null and void and held that "*there is no article in the mutual agreement that if one of the payments is not made on due time, the mutual termination will be deemed null and void*". Furthermore, the club affirmed that the player cannot simply assert that "*the termination agreement is null and void*".

16. Moreover, the club deemed that "*if the parties signed a termination agreement, it is impossible to deem the revival of the employment contract without a bilateral agreement, because the termination is the termination*". The club further stressed that the player did not render his services after the termination of the contract occurred and declared that the player cannot validly invoke art. 14bis of FIFA's Regulations.

17. In this context, the club acknowledged owing the player the amount of EUR 50,000, corresponding to the second instalment due under the termination agreement and stressed that the player "*can only request the amount of EUR 50,000 according to the article 4.2 of the mutual termination agreement*" (*i.e*. the document dated 9 July 2018).

18. In addition, the club referred to art. 6 of the termination agreement and affirmed that "*the player signed the termination agreement of his own free will and left the club and did not give services after the termination*".

19. Upon FIFA's request, the player stated that he had signed an employment contract with the Israeli club, Hapoel Tel Aviv, valid as from 1 July 2018 until 31 May 2021, providing for the net payment of i) ILS [Israeli New Shekel] 33,238 per month from July 2018 until May 2019 ii) ILS 36,561 per month from July 2019 until May 2020 and from July 2020 until May 2021).

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *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 submitted to FIFA on 22 January 2019. Taking into account the wording of art. 21 of the 2018 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition January 2020), 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 Israeli player and an Turkish club.

3. Furthermore, 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, and considering that the present claim was lodged on 22 January 2019, the June 2018 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. The members of the Chamber started by acknowledging the facts of the case, as well as the documentation contained in the 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.

5. In this respect, the Chamber noted that the player is arguing that since the club failed to comply with the termination agreement, said agreement shall be considered null and void and the club shall be held liable to pay him compensation for breach of contract without just cause in the amount of the residual value of the contract at the date of signature of said termination agreement minus the amounts earned via the new contract he had since signed with a new club.

6. On the other hand, the DRC observed that the Respondent is of the opinion that the non-compliance with the terms of the termination agreement dated 9 July 2018 does not render it null and void, and that said agreement mutually terminated the contract. The club therefore argued that only EUR 50,000 is due to the player, and that the claim of the player based on the contract is groundless.

7. The DRC highlighted that the central issue in the matter at stake would be, thus, to determine the validity of the termination agreement.

8. In this context, the Chamber thoroughly analysed the contents of the termination agreement signed by the player and the club on 9 July 2018, and observed that the agreement unambiguously stipulated that the parties mutually agreed to terminate the contract they signed on 29 January 2018.

9. What is more, the DRC duly observed that there is not any clause within the termination agreement that sets out that should the club not comply with the terms of said agreement, it would be declared null and void and the player would be entitled to claim the residual value of the contract signed on 29 January 2018.

10. In view of the above, the Chamber concluded that the player and the club novated the initial debt and terminated the contract by signing a termination agreement, and as such the player could only be in a position to claim any amount overdue under the provisions of the termination agreement only.

11. In this context, the Chamber observed that it is undisputed that the club did not comply with art. 4.2 of the agreement dated 9 July 2018 according to which it should have paid to the player EUR 50,000 by no later than 30 September 2018 despite the player's default notice.

12. In this regard, the DRC concurred that the Respondent must fulfil its obligations as per the termination agreement in accordance with the general legal principle of "*pacta sunt servanda*".

13. As such, the Chamber came to the conclusion that the player shall be awarded EUR 50,000 as outstanding remuneration corresponding to the second instalment of the termination agreement.

14. In addition, and taking into consideration the player's claim and the jurisprudence of the Chamber, the DRC decided to award on the aforementioned amounts interest of 5% p.a. as of 1 October 2018.

15. In addition, the DRC established that any further claim lodged by the player is rejected.

16. Furthermore, the DRC referred to par. 1 and 2 of art. 24bis 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.

17. In this regard, the DRC pointed out 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 and for the maximum duration of three entire and consecutive registration periods.

18. Therefore, bearing in mind the above, the DRC decided that, in the event that Giresunspor Kulübü Dernegi does not pay the amount due to the player within 45 days as from the moment in which the player, following the notification of the present decision, communicates the relevant bank details to Giresunspor Kulübü Dernegi, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on Giresunspor Kulübü Dernegi in accordance with art. 24bis par. 2 and 4 of the Regulations.

19. Finally, the DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amount, in accordance with art. 24bis par. 3 of the Regulations.

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III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Ahmed Abed, is partially accepted.

2. The Respondent, Giresunspor Kulübü Dernegi, has to pay to the Claimant outstanding remuneration in the amount of EUR 50,000, plus 5% interest *p.a.* as from 1 October 2018 until the date of effective payment.

3. Any further claim lodged by the Claimant is rejected.

4. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amount mentioned under point 2. above.

5. The Respondent shall provide evidence of payment of the due amount in accordance with point 2. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).

6. In the event that the amount due plus interest in accordance with point 2. above is not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

7. The ban mentioned in point 6. above will be lifted immediately and prior to its complete serving, once the due amount is paid.

8. In the event that the aforementioned sum plus interest is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

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Note related to the publication:

The FIFA administration may publish decisions issued by the Players' Status Committee or the DRC. Where such decisions contain confidential information, 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 20 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

Note related to the appeal procedure:

According to article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

The full address and contact numbers of the CAS are the following:

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