# Decision of the DRC Judge

**passed in Zurich, Switzerland, on 12 June 2020,**

**regarding an employment-related dispute concerning the player Kevin Pierre LAFRANCE**

**BY:**

**Daan de Jong** (The Netherlands), DRC Judge

**CLAIMANT:**

KEVIN PIERRE LAFRANCE, France
**Represented by Mr. Sami Dinç**

**RESPONDENT:**

AEL PODOSFERO DIMOSIA, Cyprus
**Represented by Mr. Christoforos Florou**

# I. FACTS OF THE CASE

1. On 16 July 2017, the French player, Kevin Pierra Lafrance (hereinafter: *the player* or *the Claimant*) and the Cypriot club, AEL Podosfero Dimosia (hereinafter: *the club* or *the Respondent*) signed an employment contract (hereinafter: *the contract*), valid as from 16 July 2017 until 31 May 2019, i.e. seasons 2017/2018 and 2018/2019.

2. Clauses 2.1 and 2.2 of the contract read as follows:

   *"2.1. The present Contract is regulated by the provisions of the Standard Employment Contract, as these have been agreed between the Cyprus Football Association (CFA) and the Cyprus Footballers' Union (PASP) and as these provisions have been codified in Annex 1 of the CFA Registration and Transfer of Players Regulations.*
   *2.2. The terms of the Standard Employment Contract constitute an integral part of the resent Contract having full and direct implementation".*

3. According to clause 13 of the standard employment contract, *"Any employment dispute between the Club and the Player shall fall under the exclusive jurisdiction of the National Dispute Resolution Chamber of the CFA and shall be resolved according to tire applicable regulations of the CFA".*

4. Additionally, on 17 July 2017, the club and the player executed an agreement titled "*The additional employment agreement*" (hereinafter: *the supplementary agreement*), which *inter alia* reads as follows (quoted *verbatim*):

   *"1. The Club and the Player acknowledge, agree and understand that the present agreement is an additional agreement on the employment agreement between the two parties dated 16/07/2017.*
   *2. The player will receive the following benefits from the Club for each Football Season 2017/2018 and 2018/2019*
   *2.1 € 20000 (Twenty Thousand Euro) net, if the Club wins the Cyprus Championship or*
   *2.2 € 10000 (Ten Thousand Euro) net, if the Club participates to Europe Competitions".*

5. The Respondent qualified for the UEFA Europa League for the season 2019/2020 due to its performance in the local league.

6. On 2 July 2019, the Claimant sent a default letter to the Respondent requesting the payment of EUR 19,000, corresponding to his "*last salary and the bonus for the participation to Europe Competitions*", granting the club a 14 days' deadline to remedy the default.

7. On 9 December 2019, the Claimant sent a second default notice to the Respondent, requesting the payment of EUR 10,000 as the bonus established under clause 2.2 of the supplementary agreement and giving 15 days for the club to comply with its obligations.

8. On 13 January 2020, the player sent a third default notice to the club, requesting the payment of the amount EUR 10,000 and grating a deadline of 10 days to remedy the default.

9. The player filed the claim at hand against the club before FIFA, and claimed that he had not received the amount of EUR 10,000, corresponding to the bonus stipulated under clause 2.2. of the supplementary agreement. In this context, the player pointed out that the Respondent qualified for the Europa League for the season 2019/2020.

10. Furthermore, the player submitted that the club failed to meet its contractual obligations and to respond to his default notices. As such, the player requested the club be ordered to pay him EUR 10,000 plus interest of 5% p.a. as from 31 May 2019 until the date of effective payment.

11. For its part, the Respondent firstly objected to the competence of FIFA and held, while referencing the contents of the contract, that the dispute resolution chamber of the Cyprus Football Association (hereinafter: *CFA NDRC*) is competent to hear the dispute.

12. As to the substance, the Respondent argued that the Claimant is charging the bonus for the participation of the club in European competitions in the season 2019/2020, i.e. when the player was no longer under contract with the Respondent. It further submitted that it did not play in any European competition during the seasons 2017/2018 and 2018/2019. Accordingly, the Respondent deems that the Claimant is not entitled to any bonuses.

13. In conclusion, the Respondent requested that the claim be deemed inadmissible or, alternatively, fully rejected.

## II. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

1. First of all, the DRC judge analysed whether he was competent to deal with the matter at hand. In this respect, he took note that the present matter was submitted to FIFA on 3 February 2020. Taking into account the wording of art. 21 of the June 2020 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 DRC judge referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition June 2020), the Dispute Resolution Chamber would, in principle, be competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a French player and a Cypriot club.

3. However, the DRC judge acknowledged that the Respondent contested the competence of FIFA's deciding bodies based on the alleged existence of a jurisdiction clause in favour of the CFA NDRC, which supposedly respects the principles enshrined in FIFA Circular no. 1010.

4. In this regard, the DRC judge noted that the Claimant is of the position that FIFA has jurisdiction to deal with the present matter.

5. Taking into account the above, the DRC Judge stressed that in accordance with art. 22 lit. b) of the June 2020 edition of the Regulations on the Status and Transfer of Players he is competent to deal with a matter such as the one in hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the DRC judge referred to the FIFA Circular no. 1010 dated 20 December 2005.

6. In this regard, the DRC judge further referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.

7. Furthermore, the DRC judge directly recalled the first sentence of art. 22 of the Regulations on the Status and Transfer of Players, which stipulates that FIFA's competence is without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes.

8. In this context, and while analysing whether he was competent to hear the present matter, the DRC judge deemed it of utmost importance to recall the contents of art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.

9. Having said this, the DRC judge turned to the allegation of the club that the CFA NDRC complies with the principles enshrined in FIFA Circular no. 1010 and the FIFA NDRC Standard Regulations. In this respect, DRC judge observed that no evidence was brought forward by the club in support of such allegation.

10. What is more, the DRC judge emphasized that, in line with the jurisprudence of the Dispute Resolution Chamber, the CFA NDRC does not seem to observe the principle of equal representation between players and clubs, in light of the fact that the regulations in place regarding the such body grant the Cyprus Football Association influence on the selection process of player members as opposed to club members.

11. In view of all the above, the DRC judge established that the Respondent's objection towards the competence of FIFA to deal with the present matter has to be rejected, and that he is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance. Hence, the DRC judge decided that the Claimant's claim is admissible.

12. In continuation, the DRC 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 par. 2 of the Regulations on the Status and Transfer of Players (edition June 2020), and considering

that the present claim was lodged on 3 February 2020, the January 2020 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

13. The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. In this respect, the DRC judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the DRC 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.

14. Having said this, the DRC judge acknowledged that the Claimant and the Respondent signed the contract and the supplementary agreement, the latter establishing a bonus of EUR 10,000 in favour of the player "*for each Football Season 2017/2018 and 2018/2019 (…) if the Club participates to Europe Competitions*" (sic).

15. The Claimant lodged a claim against the Respondent in front of FIFA, maintaining that the Respondent has overdue payables towards him in the total amount of EUR 10,000, corresponding to the aforementioned bonus.

16. Subsequently, the DRC judge took into account that the Respondent, for its part, held that the player was claiming a bonus for the participation of the club in European competitions in the season 2019/2020, when the player was no longer under contract with the Respondent. The DRC judge also acknowledge that the club further submitted that it did not play in any European competition during the seasons 2017/2018 and 2018/2019, and that hence the player is not entitled to any bonuses.

17. Lastly, the DRC judge observed that the parties do not dispute that the club did qualify to play in the UEFA Europa League in the season 2019/2020 due to its performance in the season 2018/2019.

18. In this regard, the DRC judge considered thus that the center of the dispute is whether the bonus established under clauses 2 and 2.2 of the supplementary agreement related, on one hand, to the *qualification* of the club to play in an European competition in the season 2019/2020, as argued by the Claimant; or, on the other hand, if it regards the *participation* of the club in an European competition in the seasons 2017/2018 and 2018/2019, as argued by the Respondent.

19. The DRC judge then turned his attention to the contents of clauses 2 and 2.2 of the supplementary agreement, and observed that such clauses neither have a clear wording, nor are grammatically correct. As such, the DRC judge decided that it would be necessary to interpret such clauses and seek the true intention of the parties upon its drafting and conclusion.

20. By interpreting the true intention of the parties as well as the common practice of the world of football, the DRC judge recalled the principle behind payment of bonuses, especially pre-defined and contractually agreed ones. As such, he observed that these are put in place by the parties on

the basis that a club, with the help of a player's performance, may reach a pre-defined goal, entitling such player to be remunerated for achieving such goal.

21. Additionally, the DRC judge reverted to the position of the club, and concluded that if the interpretation given by the Respondent is followed, it would only be possible for the player to enjoy a bonus if the club qualified for European competitions during the first contractual year (season 2017/2018). Hence, the DRC judge concluded that this interpretation contradicts the *caput* of the relevant clause, i.e. clause 2, which states "*the player will receive the following benefits from the club for each football season 2017/2018 and 2018/2019"* (emphasis added by the DRC judge).

22. Lastly, the DRC judge recalled the principle of *contra proferentem,* and concluded that since the club drafted of both the contract and the supplementary agreement, they should be interpreted in disfavour of the club.

23. In light of the foregoing, the DRC judge concluded that clauses 2 and 2.2 of the supplementary agreement means that a bonus would be due to the player if the club *qualified* for European competitions. Consequently, the DRC judge concluded that the true meaning of the clauses in question is the one submitted by the player, and that he is hence entitled to the claimed bonus, and therefore decided to uphold the arguments of the player and to reject the argumentation put forward by the Respondent in its defence

24. On account of the aforementioned considerations, and since it stands undisputed that the club qualified to play in the UEFA Europa League in the season 2019/2020, the DRC judge established that the Respondent failed to remit to the player his bonus in the total amount of EUR 10,000.

25. Therefore, the DRC judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant the total amount of EUR 10,000.

26. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber, the DRC judge decided that the Respondent must pay to the Claimant interest of 5% p.a. on the relevant payment as of the day on which the relevant payment fell due, i.e. 31 May 2020, until the date of effective payment.

27. What is more, taking into account the consideration under number II./12. above, the DRC judge 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.

28. In this regard, the DRC judge 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.

29. Therefore, bearing in mind the above, the DRC judge decided that, in the event that the Respondent does not pay the amounts due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, 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 the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.

30. Finally, the DRC 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. 24bis par. 3 of the Regulations.

## III. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, KEVIN PIERRE LAFRANCE, is admissible.

2. The claim of the Claimant is accepted.

3. The Respondent, AEL PODOSFERO DIMOSIA, has to pay to the Claimant the amount of EUR 10,000, plus interest at the rate of 5% p.a. on said amount as from 31 May 2019 until the date of effective payment

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 III./3. above.

5. The Respondent shall provide evidence of payment of the due amount in accordance with point III./3. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated into one of the official FIFA languages (English, French, German, Spanish).

6. In the event that the amount plus interest due in accordance with point III./3. 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 III./6. above will be lifted immediately and prior to its complete serving, once the due amounts are 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.

For the Dispute Resolution Chamber:

**Emilio García Silvero**
Chief Legal & Compliance Officer

## 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) 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 20 of the Procedural Rules).

## CONTACT INFORMATION:

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