

Decision of the Dispute Resolution Chamber

passed on 4 June 2020,

in the following composition:

Clifford Hendel (USA/France), Deputy Chairman
Elvis Chetty (Seychelles), member
Tomislav Kasalo (Croatia), member

on the claim lodged by the player,

Mr Loris Karius, Germany,
represented by Mr Horst Kletke

as Claimant

against the club,

Besiktas Futbol, Turkey

as Respondent

regarding an employment-related dispute
between the parties

I. Facts of the case

1. The club, Besiktas Futbol (hereinafter: *the club* or *the Respondent*), and Liverpool FC concluded a contract for the loan of the player, Loris Karius (hereinafter: *the player* or *the Claimant*) from Liverpool FC to the Respondent.
2. On 28 August 2018, the Claimant and the Respondent concluded an employment contract (hereinafter: *the contract*) valid as from the date of signature until 31 May 2020.
3. According to art. 4 of the contract, the contract will be extended until 31 May 2023 if the Respondent exercises its option to acquire the Claimant on a permanent basis from Liverpool FC.
4. Furthermore, the contract stipulated the following:

"For the 2019 / 2020 Football Season: 2,100,000 EUR

The aforementioned amount is NET and to be paid to the Player by the Club on the below mentioned dates:

<i>31/08/2019</i>	<i>:EUR 210,000</i>
<i>30/09/2019</i>	<i>:EUR 210,000</i>
<i>31/10/2019</i>	<i>:EUR 210,000</i>
<i>30/11/2019</i>	<i>:EUR 210,000</i>
<i>31/12/2019</i>	<i>:EUR 210,000</i>
<i>31/01/2020</i>	<i>:EUR 210,000</i>
<i>28/02/2020</i>	<i>:EUR 210,000</i>
<i>31/03/2020</i>	<i>:EUR 210,000</i>
<i>30/04/2020</i>	<i>:EUR 210,000</i>
<i>31/05/2020</i>	<i>:EUR 210,000"</i>

5. In addition to the above, the Claimant was also entitled to the following:
 - 20 economy-class flights between Istanbul and *"a city of Player's choice in Europe"*;
 - A maximum amount of EUR 3,000 per month for the rent of his apartment. However, if the rent is lower, the Respondent will only be required to pay the amount equivalent to the rent;
 - A sponsor car for the duration of the contract;
 - 3 Category A tickets for home matches of the Respondent.

6. On 2 March 2020, the Claimant put the Respondent in default to pay the amount of EUR 808,000 until 14 March 2020. Moreover, the Claimant also recalled that the amount of EUR 6,000 corresponding to his legal expenses will be due on 15 May 2019.
7. On 17 March 2020, the Respondent suggested a payment schedule, whereby the Respondent would pay to the Claimant the total amount of EUR 1,616,305, as follows:
 - EUR 376,305 on 30 March 2020;
 - EUR 410,000 on 30 April 2020;
 - EUR 410,000 on 30 May 2020 ;
 - EUR 420,000 on 30 June 2020.
8. On the same day, the Claimant rejected the Respondent's proposal. Rather, the Claimant proposed the following and granted the Respondent a deadline of 18 March 2020 to accept:
 - EUR 595,000 on 20 March 2020;
 - EUR 510,750 on 30 May 2020;
 - EUR 510,750 on 30 May 2020.
9. On 18 March 2020, the Respondent stated that *"it seems really difficult to make it on time with your numbers. So we are kindly asking again to do agreement with numbers and dates in our first proposal"*.
10. On 19 March 2020, the Claimant indicated that the amount of EUR 595,000 must be made by 20 March 2020 as it has been outstanding for more than 30 days. If this payment is made on time, the Claimant informed the Respondent that the further instalments may be made according to the payment schedule as proposed by the Claimant in his email dated 17 March 2020.
11. On 21 March 2020, the Claimant lodged a claim against the Respondent in front of FIFA requesting the following:

"The Respondent is ordered to pay to the Claimant EUR 808,000 net plus an interest of 5% per year out of

- *EUR 157,000 as of 30 November 2019,*
- *EUR 210,000 as of 31 December 2019,*
- *EUR 210,000 as of 31 January 2020,*
- *EUR 210,000 as of 28 February 2020,*
- *EUR 15,000 as of 15 March 2020 and*
- *EUR 6,000 as of 15 May 2019."*

12. In his claim, the Claimant held that there were outstanding a part of the salary of November 2019 in the amount of EUR 157,000, as well as the salaries of December 2019, January and February 2020.
13. Furthermore, the Claimant stated that the housing costs in the amount of EUR 3,000 per month were outstanding for the months of October, November and December 2019, as well as for January and February 2020.
14. Moreover, the Claimant held that the legal expenses of EUR 6,000 agreed upon in the payment confirmation, due on 15 May 2019, were still outstanding.
15. Finally, the Claimant mentioned that despite the numerous reminders and deadlines granted, the Respondent has not made any of the payments above.
16. In its reply, the Respondent explained that it has some "*financial difficulties*", but that it's trying to "*cure these problems*". However, the Respondent wished to highlight that the COVID-19 pandemic has made it very hard for the club to complete all the payments.
17. Having said that, the Respondent however deemed that it made a payment which the Claimant did not take into account in his claim.
18. In this context, the Respondent argued that it had paid an amount of EUR 6,000 for the reimbursement of the legal expenses on 12 July 2019.
19. Moreover, the Respondent argued that in the default letter sent by the Claimant on 2 March 2020, the salary and house allowance for the month of February 2020 was not "*delayed more than 30 days as required in article 12bis par. 2*" and therefore these amounts should not be taken into consideration when applying art. 12bis.
20. On 6 May 2020, the Respondent informed FIFA that it made a payment of EUR 367,499.99 as "*partial overdue guaranteed salary*" and EUR 9,000 "*as house rent allowance [...] including the month of December 2019*".
21. The player confirmed the payment of EUR 6,000.
22. Furthermore, the Claimant also acknowledged the payment of EUR 367,499.99 and EUR 9,000.
23. In this respect, the Claimant amended his claim as follows:

"The Respondent is ordered to pay to the Claimant EUR 425,500.01 net plus an interest of 5% per year out of

- *EUR 157,000 as from 30 November 2019 until 30 April 2020,*
- *EUR 210,000 as from 31 December 2019 until 30 April 2020,*
- *EUR 210,000 as of 31 January 2020,*
- *EUR 210,000 as of 28 February 2020,*
- *EUR 15,000 as of 15 March 2020 until 30 April 2020 and*
- *EUR 6,000 as of 1 May 2020."*

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter: *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 submitted to FIFA on 21 March 2020. Consequently, the 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the Procedural Rules).
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 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition June 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 German player and a Turkish club.
3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, the Chamber confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition June 2020), and considering that the claim was lodged on 21 March 2020, the March 2020 edition of the aforementioned regulations (hereinafter: *the 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. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. 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. In particular, the Chamber recalled that, in accordance with art. 6 par. 3 of Annex 3 of the Regulations, FIFA may use, within the

scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in the TMS.

5. Having said this, the Chamber proceeded with an analysis of the circumstances surrounding the present matter, the parties' arguments as well the documentation on file, bearing in mind art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.
6. First of all, the members of the Chamber acknowledged that, on 20 August 2018, the player and the club had concluded an employment contract valid as from the date of its signature until 31 May 2020 pursuant to which the club undertook to pay to the player the remuneration, as established in points I.4. and 5. above.
7. Furthermore, the members of the DRC took note of the fact that, on 2 March 2020, the player had put the club in default of payment of the amount of EUR 808,000, setting a deadline until 14 March 2020 in order to remedy the default.
8. In addition, the Chamber took also observed that the parties tried to amicably solve the issue, however, without success.
9. Moreover, the DRC took note that the player acknowledged several payments from the Respondent, but that an amount of EUR 425,500.01 still remained unpaid.
10. Subsequently, the members of the DRC took note that the club, for its part, did not contest that didn't pay several salaries and housing allowances, but argued that it faces "*financial difficulties*" and that the COVID-19 pandemic has made it very difficult for the club to complete all the payments.
11. In this context, the DRC considered that the arguments raised by the Respondent cannot be considered a valid reason for non-payment of the monies claimed by the Claimant, in other words, the reasons brought forward by the Respondent in its defence do not exempt the Respondent from its obligation to fulfil its contractual obligations towards the Claimant.
12. Moreover, the Chamber remarked that in its submissions, the Respondent stated that the COVID-19 outbreak had made it difficult to make the payments requested by the Claimant.
13. In this respect, the DRC highlighted that the Respondent had not invoked the impact of the COVID-19 outbreak within the e-mails it had exchanged with the player between 2 and 19 March 2020.

14. As such, the Chamber concluded that it could not be established that there was a causal relation between the alleged financial impact of the COVID-19 outbreak on the Respondent's finances and the debt contracted by the Respondent towards the Claimant.
15. In view of all the above, bearing in mind its extensive jurisprudence according to which financial difficulties cannot be held as a valid reason to the non-payment of contractually agreed payments, the DRC decided to reject the argumentation put forward by the Respondent in its defence.
16. On account of the aforementioned considerations, the Chamber established that the Respondent failed to remit to the Claimant the total amount of EUR 425,500.01 corresponding to the salary for January and February 2020 in the amount of EUR 420,000 and the unpaid part of the housing allowance for January and February 2020 in the amount of EUR 5,500.01.
17. Consequently, the members of the Chamber decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant overdue payables in the total amount of EUR 425,500.01.
18. In addition, taking into consideration the Claimant's request, the members of the Chamber decided to award the Claimant interest as follows:
 - a) 5% interest p.a. on the amount of EUR 157,000 as from 1 December 2019 until 30 April 2020;
 - b) 5% interest p.a. on the amount of EUR 210,000 as from 1 January 2020 until 30 April 2020;
 - c) 5% interest p.a. on the amount of EUR 210,000 as from 1 February 2020 until the date of effective payment;
 - d) 5% interest p.a. on the amount of EUR 210,000 as from 1 March 2020 until the date of effective payment;
 - e) 5% interest p.a. on the amount of EUR 9,000 as from 15 March 2020 until 30 April 2020;
 - f) 5% interest p.a. on the amount of EUR 5,500.01 as from 1 May 2020 until the date of effective payment.
19. Therefore, the DRC decided to partially accept the player's claim and concluded its deliberations by rejecting any further claim of the player.
20. Furthermore, taking into account the consideration under number II./3. above, the Chamber 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.

21. In this regard, the Chamber 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.
22. Therefore, bearing in mind the above, the DRC 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.
23. Finally, the Chamber 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, Loris Karius, is partially accepted.
2. The Respondent, Besiktas Futbol, has to pay to the Claimant outstanding remuneration in the amount of EUR 425,500.01, plus interest as follows:
 - a. 5% interest p.a. on the amount of EUR 157,000 as from 1 December 2019 until 30 April 2020;
 - b. 5% interest p.a. on the amount of EUR 210,000 as from 1 January 2020 until 30 April 2020;
 - c. 5% interest p.a. on the amount of EUR 210,000 as from 1 February 2020 until the date of effective payment;
 - d. 5% interest p.a. on the amount of EUR 210,000 as from 1 March 2020 until the date of effective payment;
 - e. 5% interest p.a. on the amount of EUR 9,000 as from 15 March 2020 until 30 April 2020;
 - f. 5% interest p.a. on the amount of EUR 5,500.01 as from 1 May 2020 until the date of effective payment.
3. Any further claim of 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 amounts 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 amounts due plus interest in accordance with point 2. above are 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 amounts are paid.

8. In the event that the aforementioned sums plus interest are 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.

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 relating to the motivated decision (legal remedy):

According to art. 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 (cf. point 4 of the directives).

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

Court of Arbitration for Sport (CAS)
Avenue de Beaumont 2, CH-1012 Lausanne
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