

Decision of the DRC Judge

passed via videoconference, on 12 June 2020,

regarding an employment-related dispute concerning the player Sofian Yanis El Moudane

BY:

Daan de Jong (Netherlands), DRC Judge

CLAIMANT:

SOFIAN YANIS EL MOUDANE, France

Represented by Mr. Federico Venturi Ferriolo and Mr Carlo Rombolà

RESPONDENT:

FK SENICA, Slovakia

Represented by Pavlovic Sports

I. FACTS OF THE CASE

1. On 18 February 2019, the player, Sofian Yani El Moudane (hereinafter: *the player* or *the Claimant*) and the Slovakian club, FK Senica (hereinafter: *the club* or *the Respondent*) concluded an employment contract (hereinafter: *the contract*) valid as from 25 January 2019 until 30 June 2020.
2. On 22 November 2019, the parties concluded an "annex to the contract" (hereinafter: *the annex*).
3. The annex stipulated the following:

"1. The contractual parties have mutually agreed to amend the Professional employment contract [...]

 - *Article 8, point 3 will be worded:
The monthly salary shall amount to 5.807 EUR gross during the period of 01/07/2019 until and including 15/12/2019.*
 - *Article 8, point 6 will be worded:
Before 30/11/2019 the club and the player must inform each other if they want to lift the option for prolongation of the Contract.*
 - *Article 8, point 15 will be worded:
If the club don't sell the player until 15/12/2019, the player is a free player.*
 - *Article 9, point 1 will be worded:
This Contract is concluded for a definite period of time from 25/01/2019 until 15/12/2019.*
4. On 3 February 2020, the Claimant sent a default notice to the Respondent, requesting payment of EUR 13,017.50, setting a deadline of 10 days.
5. On 24 March 2020, the player lodged a claim in front of FIFA, requesting the following:

*"I. The claim filed by Sofian Yanis El Moudane is admissible and upheld;
II. FK Senica s.a. is ordered to pay immediately to Sofian Yanis El Moudane the amount of UER 13,017.50 [...] plus interest at 5% per annum as of the date of such payments fell due until the entire payment.
III. FK Senica s.a. shall compensate the legal costs and other costs incurred by Sofian Yanis El Moudane in this proceeding."*
6. In his claim, the player maintained that the club remitted two payments in December 2019, i.e. EUR 500 on 11 December 2019 and EUR 1,000 on 31 December

2019, but failed to remit the residual part of his salaries corresponding to October until 15 December 2019.

7. According to the player, he was entitled to a total amount of EUR 14,517.50, of which he received an amount of EUR 1,500.
8. In spite of having been invited to do so, the Respondent has not replied to the claim.

II. CONSIDERATIONS OF THE DRC JUDGE

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 24 March 2020. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2019; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 of the Procedural Rules).
2. Subsequently, the DRC judge referred to art. 3 par. 2 and par. 3 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 (June 2020 edition) he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a French player and a Slovakian club.
3. Furthermore, 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 (June 2020 edition), and considering that the present claim was lodged on 24 March 2020, the March 2020 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. 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.
5. Having said this, the DRC judge acknowledged that the Claimant and the Respondent were bound by an employment contract and an annex in accordance with which the Claimant was entitled to receive a monthly salary in the amount of EUR 5,807. In the absence of a clear contractual clause with respect to the due date of payment, in line with the jurisprudence of the Dispute Resolution Chamber, the

DRC judge considered that the due date of payment of the Claimant's salary was on the last day of each month.

6. 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 13,017.50, corresponding to the unpaid part of the salary for October 2019, the full salary for November 2019 and the salary for half of December 2019.
7. In this context, the DRC judge took particular note of the fact that, on 3 February 2020, the Claimant put the Respondent in default of payment of the aforementioned amount, setting a 10 days' time limit in order to remedy the default.
8. Consequently, the DRC judge concluded that the Claimant had duly proceeded in accordance with art. 12bis par. 3 of the Regulations, which stipulates that the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).
9. Subsequently, the DRC judge took into account that the Respondent, for its part, failed to present its response to the claim of the Claimant, in spite of having been invited to do so. In this way, the DRC judge considered that the Respondent renounced its right to defence and thus accepted the allegations of the Claimant.
10. Furthermore, as a consequence of the aforementioned consideration, the DRC judge concurred that in accordance with art. 9 par. 3 of the Procedural Rules he shall take a decision upon the basis of the documents already on file, in other words, upon the statements and documents presented by the Claimant.
11. Having said this, the DRC judge acknowledged that, in accordance with the employment contract and annex provided by the Claimant, the Respondent was obliged to pay to the Claimant a total amount of EUR 14,517.50.
12. Taking into account the documentation presented by the Claimant in support of his petition, the DRC judge concluded that the Claimant had substantiated his claim pertaining to overdue payables with sufficient documentary evidence.
13. On account of the aforementioned considerations, the DRC judge established that the Respondent failed to remit the Claimant's remuneration in the total amount of 13,017.50, corresponding to the unpaid part of the salary for October 2019, the full salary for November 2019 and the salary for half of December 2019.
14. In addition, bearing in mind the considerations under number II./7. above the DRC judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.

15. Consequently, 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 13,017.50.
16. 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.* as follows:
 - on the amount of EUR 4,307 as from 1 November 2019 until the date of effective payment;
 - on the amount of EUR 5,807 as from 1 December 2019 until the date of effective payment;
 - on the amount of EUR 2,903.50 as from 16 December 2019 until the date of effective payment.
17. Subsequently, the DRC judge decided to reject the Claimant's claim pertaining to legal costs in accordance with FIFA's longstanding jurisprudence in this regard.
18. Therefore, the DRC decided to partially accept the player's claim and concluded its deliberations by rejecting any further claim of the player.
19. In continuation, taking into account the consideration under number II./14. above, the DRC judge referred to art.12bis par. 2 of the Regulations which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
20. The DRC judge established that in virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. Therefore, and in the absence of the circumstance of repeated offence, the DRC judge decided to impose a warning on the Respondent in accordance with art. 12bis par. 4 lit. a) of the Regulations.
21. In this respect, the DRC judge wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.
22. Furthermore, taking into account the consideration under number II./3. 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.

23. 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.
24. 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.
25. Moreover, 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 DRC JUDGE

1. The claim of the Claimant, Sofian Yanis El Moudane, is partially accepted.
2. The Respondent, FK Senica, has to pay to the Claimant the amount of EUR 13,017.50 plus interest at the rate of 5% *p.a.* as follows:
 - on the amount of EUR 4,307 as from 1 November 2019 until the date of effective payment;
 - on the amount of EUR 5,807 as from 1 December 2019 until the date of effective payment;
 - on the amount of EUR 2,903.50 as from 16 December 2019 until the date of effective payment.
3. Any further claim lodged by the Claimant is rejected.
4. A warning is imposed on the Respondent.
5. 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.
6. 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).
7. 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).
8. The ban mentioned in point 7. above will be lifted immediately and prior to its complete serving, once the due amount is paid.

9. 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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