

Decision of the Dispute Resolution Chamber

passed on 3 August 2022

regarding an employment-related dispute concerning the player
Mahir Emreli

BY:

Philippe Diallo (France)

CLAIMANT:

Legia Warszawa, Poland

Represented by Dr Jakub Laskowski

RESPONDENT:

Mahir Emreli, Azerbaijan

I. Facts of the case

1. On 2 February 2022, the Polish club Legia Warszawa (hereinafter the *Claimant* or the *Club*) and the Azerbaijani player Mahir Emreli (hereinafter the *Respondent* or the *Player*) concluded a termination agreement (hereinafter the *Termination Agreement*), ending their employment relationship.
2. In Clause 1.2 of the Termination Agreement, the Claimant and the Respondent (jointly referred to as the *Parties*) agreed upon the following financial conditions:
 - EUR 700,000 net, payable not later than 10 February 2022;
 - EUR 25,000 net, payable not later than 15 March 2022;
 - EUR 25,000 net, payable not later than 15 June 2022;
 - EUR 25,000 net, payable not later than 15 September 2022;
 - EUR 25,000 net, payable not later than 15 December 2022.
3. Furthermore, in Clause 1.6 of the Termination Agreement, the Parties agreed upon the following:

*“In the event the Player does not comply in full of payments of the instalments agreed in clauses 1.2.1 - 1.2.5 above, the Club shall serve **notice** (in writing or by e-mail send to the addresses stipulated In clause 3.7. of the Agreement] to the Player granting **additional payment term** (i.e. **5 [five] working days**) to comply with said unpaid payments indicated in the notice end resulting from this Agreement, **failing which, the remaining amount of the Settlement Amount due from that very moment shall be immediately due** and payable, without prejudice of the **contractual penalty amounting to EUR 50,000** [fifty thousand Euro], **due within 7 days after the ineffective lapse of the additional payment term** end a **default interest** et a rate of **18% p.a.** that the Parties expressly agree shall be in any case applied over the amount of the Settlement Amount.”* (emphasis added)
4. On 25 March 2022, the Claimant sent a default notice to the Respondent, requesting the amount of EUR 25,000, corresponding to the March 2022 instalment. The Claimant granted the Respondent 5 days to make the respective payment.
5. On 4 April 2022, the Claimant reiterated its request and granted the Respondent additional deadline of 10 day to comply with its contractual obligations, however, to no avail.
6. During the FIFA proceedings, on 14 June 2022 and 18 July 2022, the Respondent made a payment of EUR 50,000 (twice the amount of EUR 25,000) to the Claimant.

II. Proceedings before FIFA

7. On 9 May 2022, 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

8. The requests for relief of the Claimant, were the following:

“The Claimant respectfully requests the FIFA DRC to issue, in due course, a ruling ordering the Respondent to pay to the Claimant the second instalment of the compensation due under the Termination Agreement, i.e., the amount of EUR 25,000. The Claimant also kindly request the honourable FIFA DRC to adjudicate that the Respondent has to pay to the Claimant interest in the amount of eighteen per cent (18%) per annum applied over the second instalment starting from 15 April 2022.

The Claimant respectfully requests the FIFA DRC to issue, in due course, a ruling ordering the Respondent to pay to the Claimant all future instalments of agreed compensation under the Termination Agreement indicated in clauses 1.2.3 - 1.2.5 of the Termination Agreement, i.e., the amount of EUR 75,000. The Claimant also kindly request the honourable FIFA DRC to adjudicate that the Respondent has to pay to the Claimant interest in the amount of eighteen per cent (18%) per annum applied over all future instalments indicated in clauses 1.2.3 - 1.2.5 of the Termination Agreement starting from 15 April 2022.

The Claimant respectfully requests the FIFA DRC to issue, in due course, a ruling ordering the Respondent to pay to the Claimant a contractual penalty in the amount of EUR 50,000 on continued default in accordance with clause 1.6 of the Termination Agreement.

In case of the failure to pay the relevant amounts in due time, the Respondent is imposed with a ban in taking part in any football-related activity until the due amounts are paid [cf. Article 24bis of the FIFA RSTP].”

9. The Claimant based its claim on the legal principle *pacta sunt servanda*.
10. Furthermore, pointing to the Clause 1.6 of the Termination Agreement, the Claimant argued that (i) the acceleration clause was triggered and that, consequently, the Respondent shall make the payment of all future instalments, i.e. EUR 75,000.
11. The Claimant continued that a penalty of EUR 50,000 shall be imposed on the Respondent as it is *“not grossly disproportionate”*.
12. Finally, the Claimant argued that the interest of 18% *p.a.* shall apply as from the from the date of breach, i.e. 15 April 2022, until the date of the effective payment.

b. Position of the Respondent

13. In its reply, the Respondent provided for a proof of payment of EUR 25,000, corresponding to the instalment of March 2022. Furthermore, the Respondent argued that it will pay all future instalments on the respective due dates.
14. Finally, the Respondent requested that the penalty shall be reduced as both, the interest of 18% and the penalty are otherwise applicable, which is excessive.

c. Position of the Claimant

15. The Claimant was requested to comment on the payment of EUR 25,000. The latter recognized to have received this amount.
16. In view of the above, the Claimant slightly adapted its request for relief, reducing the claimed amount by EUR 25,000 as follows:

“The Claimant respectfully requests the FIFA DRC to issue, in due course, a ruling ordering the Respondent to pay to the Claimant interest in the amount of eighteen per cent (18%) per annum due for the delay of the second instalment of the compensation due under the Termination Agreement applied over the amount of EUR 25,000 in the period from 15 April 2022 until 14 June 2022.

The Claimant respectfully requests the FIFA DRC to issue, in due course, a ruling ordering the Respondent to pay to the Claimant all future instalments of agreed compensation under the Termination Agreement indicated in clauses 1.2.3 – 1.2.5 of the Termination Agreement, i.e., the amount of EUR 75,000. The Claimant also kindly request the honourable FIFA DRC to adjudicate that the Respondent has to pay to the Claimant interest in the amount of eighteen per cent (18%) per annum applied over all future instalments indicated in clauses 1.2.3 – 1.2.5 of the Termination Agreement starting from 15 April 2022.

The Claimant respectfully requests the FIFA DRC to issue, in due course, a ruling ordering the Respondent to pay to the Claimant a contractual penalty in the amount of EUR 50,000 on continued default in accordance with clause 1.6 of the Termination Agreement.”

17. Finally, on 18 July 2022, the Claimant acknowledged to have received a further payment of EUR 25,000.
18. In view of the above, the Claimant adapted its request for relief, reducing the claimed amount by EUR 25,000 as follows:

“The Claimant respectfully requests the FIFA DRC to issue, in due course, a ruling ordering the Respondent to pay to the Claimant interest in the amount of eighteen per cent (18%) per

annum due for the delay of the second instalment of the compensation due under the Termination Agreement applied over the amount of EUR 25,000 in the period from 15 April 2022 until 14 June 2022.

The Claimant respectfully requests the FIFA DRC to issue, in due course, a ruling ordering the Respondent to pay to the Claimant interest in the amount of eighteen per cent (18%) per annum due for the delay of the third instalment of the compensation due under the Termination Agreement applied over the amount of EUR 25,000 in the period from 15 June 2022 until 15 July 2022.

The Claimant respectfully requests the FIFA DRC to issue, in due course, a ruling ordering the Respondent to pay to the Claimant all future instalments of agreed compensation under the Termination Agreement indicated in clauses 1.2.4 – 1.2.5 of the Termination Agreement, i.e., the amount of EUR 50,000. The Claimant also kindly request the honourable FIFA DRC to adjudicate that the Respondent has to pay to the Claimant interest in the amount of eighteen per cent (18%) per annum applied over all future instalments indicated in clauses 1.2.4 – 1.2.5 of the Termination Agreement starting from 15 April 2022.

The Claimant respectfully requests the FIFA DRC to issue, in due course, a ruling ordering the Respondent to pay to the Claimant a contractual penalty in the amount of EUR 50,000 on continued default in accordance with clause 1.6 of the Termination Agreement.”

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

19. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *the Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 9 May 2022 and submitted for decision on 3 August 2022. Taking into account the wording of art. 34 of the June 2022 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.
20. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (July 2022 edition), the Single Judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Azerbaijani player and a Polish club.
21. Subsequently, the Single Judge 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 (July 2022), and considering that the present claim was lodged on 9 May 2022, the March 2022 edition of said regulations (hereinafter *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

22. The Single Judge 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 Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Merits of the dispute

23. His competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, he started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single 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.

i. Main legal discussion and considerations

24. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that this is a claim of a Club against a Player concerning outstanding payment of a compensation arising from a Termination Agreement.
25. First of all, the Single Judge recalled that during the proceedings, on 14 June 2022, the Respondent made a payment of EUR 25,000, corresponding to instalment of March 2022, which the Claimant duly recognized. What is more, the Single Judge recalled that on 18 July 2022, the Claimant recognized a further payment of EUR 25,000.
26. Nonetheless, the Single Judge observed that the Claimant insisted on its claim, arguing that an acceleration clause was triggered and that the future instalments became overdue by the late payment of the instalment of March 2022, i.e. that the amount of EUR 50,000 still remains outstanding.
27. Furthermore, the Single Judge acknowledged Claimant's argumentation that also a penalty of EUR 50,000 has been triggered, along with an interest of 18% *p.a.*

28. In this context, the Single Judge acknowledged that his task was to assess if the acceleration clause has indeed been triggered and, consequently, if the remaining instalments, penalty and the instalment of 18% *p.a.* became due.
29. At this point, the Single Judge recalled the wording of Clause 1.6 of the Termination Agreement: *"In the event the Player does not comply in full of payments of the instalments agreed in clauses 1.2.1 - 1.2.5 above, the Club shall serve notice (in writing or by e-mail send to the addresses stipulated In clause 3.7. of the Agreement] to the Player granting additional payment term (i.e. 5 [five] working days] to comply with said unpaid payments indicated in the notice end resulting from this Agreement, failing which, the remaining amount of the Settlement Amount due from that very moment shall be immediately due and payable, without prejudice of the contractual penalty amounting to EUR 50,000 [fifty thousand Euro], due within 7 days after the ineffective lapse of the additional payment term end a default interest et a rate of 18% p.a. that the Parties expressly agree shell be in any case applied over the amount of the Settlement Amount."*
30. After an analysis of the above-quoted clause and taking into account that the pre-requisites triggering the acceleration clause were fulfilled (instalment became due and a notice was duly served), the Single Judge was of the opinion that the acceleration clause was, indeed, triggered.
31. In view of the above, the Single Judge concluded that all remaining instalments as well as the penalty of EUR 50,000 became due and shall be paid to the Claimant in line with the legal principle *pacta sunt servanda*.

ii. Consequences

32. Having stated the above, in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the contract, *i.e.* EUR 50,000 as well as a penalty of EUR 50,000.
33. For the sake of completion, the Single Judge pointed out that considering the outstanding amount in dispute, such penalty is not excessive and considered the amount proportionate.
34. In addition, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest. In this respect, the Single Judge recalled that the Parties stipulated that an interest of 18% *p.a.*, which is in line with the long-standing jurisprudence.

35. Consequently, the Single Judge decided to award the interest as follows:
- on the outstanding amount of EUR 50,000 at the rate of 18% *p.a.* as from 15 April 2022 until the date of effective payment;
 - EUR 727.40 as interests of 18 % *p.a.* on the outstanding amount of EUR 25,000 between 15 April 2022 and 14 June 2022;
 - EUR 369.85 as interests of 18 % *p.a.* on the outstanding amount of EUR 25,000 between 15 June 2022 and 15 July 2022.
36. Finally, the Single Judge concluded his deliberation by deciding not to award the interest over the penalty in line with the legal principle *ne bis in idem*.

iii. Compliance with monetary decisions

37. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24 par. 1 and 2 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.
38. In this regard, the Single Judge highlighted 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. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
39. Therefore, bearing in mind the above, the Single Judge decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
40. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
41. The Single 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. 24 par. 8 of the Regulations.

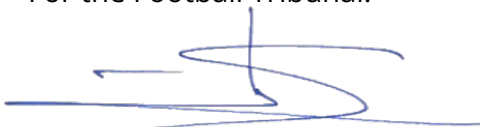
d. Costs

42. The Single Judge 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 Single Judge decided that no procedural costs were to be imposed on the Parties.
43. Likewise and for the sake of completeness, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
44. Lastly, the Single Judge concluded his 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, Legia Warszawa, is partially accepted.
2. The Respondent, Mahir Emreli, has to pay to the Claimant, the following amount(s):
 - EUR 50,000 as outstanding amount plus 18% interest *p.a.* as from 15 April 2022 until the date of effective payment;
 - EUR 50,000 as penalty;
 - EUR 727.40 as interests of 18 % *p.a.* on the outstanding amount between 15 April 2022 and 14 June 2022;
 - EUR 369.85 as interests of 18 % *p.a.* on the outstanding amount between 15 June 2022 and 15 July 2022.
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent shall be restricted on any football-related activity up until the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months.
 2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the six months.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
7. 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

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777