

Decision of the Dispute Resolution Chamber

passed on 4 August 2022

regarding an employment-related dispute concerning the player Raul Aleman Santana

BY:

Omar ONGARO (Italy), Chairperson
Khadija TIMERA (Senegal), member
Laurel VAURASI (Fiji), member

CLAIMANT:

Raúl Alemán Santana, Spain

RESPONDENT:

Club Sportowy Unia Janikowo, Poland

I Facts

1. On 1 July 2021, the parties concluded an **employment contract** valid as from the date of signature until 30 June 2023.
2. According to the contract, the player was entitled to the following (note: all contractual provisions are a free translation from the Spanish translation provided by the player, which is a translation from Polish):
 - "a) PLN 33,600 (...) gross [inclusive of taxes], paid in equal parts of PLN 2,800 (...) gross [inclusive of taxes] per month in the 2021/2022 season, i.e. in the period from July 1, 2021 to June 30, 2023,*
 - b) PLN 33,600 (...) gross [inclusive of taxes], paid in equal parts of PLN 2,800 (...) gross [inclusive of taxes] per month in the season 2021/2022, i.e. in the period from July 1, 2021 until June 30, 2022.*
 - c) the player shall receive EUR 100 (...) as a bonus for every 3 points obtained by the Team in a championship match, but only when the Team wins at least 6 points in a given month."*

(...)

3 Under this Contract, the Club agrees to:

(...)

 - c) Provide the Player with football accident insurance in accordance with the provisions of common law and the regulations of FIFA and PZPN [Polish Football Association];*

(...)

 - e) Provide treatment in case of injuries arising exclusively from participation in training, official matches, friendly matches or from illness, with the restriction that the Club is not obliged to cover the costs of treatment of long-term or genetic illnesses of the Player which are not related to the Player's performance as a professional football player;*
3. In addition, the parties concluded an **image rights agreement** valid as from 1 July 2021 until 31 December 2023.
4. According to art. 7 of the image rights agreement, the player was entitled to a total remuneration of PLN 145,500 to be paid in 30 instalments of PLN 4,850 each.
5. The image rights agreement stipulated, inter alia, the following:
 - §4
 - [Athlete's obligations].*
 - By virtue of the present Contract, the Athlete:*
 - (a) Expresses his or her consent to the dissemination of his or her Image, in particular by means of filming, photography*
 - a) Consents to the dissemination of his or her Image, in particular through filming, photography or other recording,*
 - b) May give his or her written consent to the dissemination of the Image in a strictly defined situation of his or her private life, in particular through filming, photography or other recording, and defined situation of your private life,*
 - c) Will participate in all television recordings, radio interviews, other promotional actions and events organized by the Partner or the*
and events organized by the Partner or its sponsors,
 - d) He will not conclude individual advertising contracts, in particular those related to the Image, without the consent of the Partner.*

(...)

7 par 4

The Member undertakes to enroll the Athlete in health insurance and to pay for him the monthly contributions for such insurance, within the meaning of the applicable provisions.

(...)

10 par. 3 The Parties agree that any disputes related to the present Agreement shall be submitted to the PZPN [Polish Football Association] Football Arbitration Court.

6. In October 2021, the player was injured during a match.
7. On 21 January 2021, the player received a termination notice via Whatsapp (with an enclosed PDF), stating the following (note: free translation from the Spanish translation provided by the player, which is a translation from Polish):
"We hereby submit unilateral termination of the contract of termination of the contract for his fault: Of the Professional Football Contract of July 1, 2021. Of the Advertising Services Agreement dated July 1, 2021.
Motivation
Unexcused absence in, among others, three training units on the days: 10.01.2022, 11.01.2022, 12.01.2022, 13.01.2022 without justifying in writing his absence.
Due to the absence from the training sessions, based on the provisions of FIFA and PZPN [Polish Football Association], we terminate the aforementioned contracts due to his fault."
8. The player declared that he remained unemployed following the termination of the contract.
9. On 20 May 2022, the player lodged a claim before FIFA for outstanding remuneration and breach of contract without just cause, and requested the following:

PLN 17,203.53 as outstanding remuneration, detailed as follows:

PLN 6,238.53 arising from the following table:

| Monthly | Salary monthly | Date of payment | Amount received | Paid amount | Amount due |
|--------------|----------------|-----------------|-----------------|--------------|--------------|
| July 21 | 7,650.00 PLN | 27/08/2021 | 1,410.00 EUR | 6,409.10 PLN | 1,240.90 PLN |
| August 21 | 7,650.00 PLN | 18/10/2021 | 1,200 EUR | 5,484.00 PLN | 2,166.00 PLN |
| September 21 | 7,650.00 PLN | 15/11/2021 | 1,600 EUR | 7,272.73 PLN | 377.27 PLN |
| October 21 | 7,650.00 PLN | 23/12/2021 | 1,400 EUR | 6,482.00 PLN | 1,168.00 PLN |
| November 21 | 7,650.00 PLN | 07/01/2022 | 1,400 EUR | 6,363.64 PLN | 1,286.36 PLN |
| | | | | Total: | 6,238.53 PLN |

PLN 7,650, corresponding to his full salary of December 2021 (PLN 7,650) and his pro rata salary of January 2021 (PLN 3,315).

EUR 900 as bonuses, detailed as follows:

EUR 300 for three wins in the month of September 2021;

EUR 400 for four wins in the month of October 2021; and

EUR 200 for two wins in the month of November 2021.

In this regard, the player referred to the following hyperlink:

<https://www.transfermarkt.es/raulaleman/leistungsdaten/spieler/510401/saison/2021/plus/1>

EUR 384.97 as medical costs. In this respect, the player provided the following bills:

- MR Gran Canaria, EUR 180 – 14/12/2021;
- Consultation Traumatology, EUR 69 – 21.12.2021;

- Zespol Poradni Specjal: 11,27 €
- Orvit Citomed, Torun: 71,31 €
- Joanna Drew alii: 53,39 €

PLN 137,700 as compensation for breach of contract without just cause.

10. The player requested 5% interest p.a. as from the due dates.
11. The player considered that the image rights agreement is part of the employment relationship due to, inter alia, the following reasons:
 - The parties are the same,
 - The image rights agreements stipulates a higher salary than the employment contract;
 - Art 7 par 4 of the image rights agreement refers to the payment of social contributions, which are usually related to employment contracts;
 - In his termination notice, the club terminated both contracts
12. As a result, the player argued that his monthly salary is as follows:
From July 2021 to June 2023: the monthly sum of PLN 7,650 (PLN 2,800 salary + PLN 4850 image rights);
From July to December 2023: the monthly sum of PLN 4,850.
13. The Claimant argued that the club terminated the contract on alleged absences, although, he had permission from the club to travel to Spain in order to continue with the recovery of his knee injury.
14. In its reply to the claim, the club argued that it started trainings on 10 January 2022, but that the player did not appear and did not inform about his absence.
15. In view of the above, the Respondent confirmed that it terminated the contract since the player “was not present at the training classes at least three times in the period of six consecutive months”.
16. The club explained that the termination was sent via courier on 14 January 2022 but that the player never picked it up and was returned to the club.
17. The club explained that the bonuses are payable as follows:
In the month of August, the team scored 3 points (no bonus)
In September, the team scored 9 points (3 bonuses)
In October the team scored 12 points (the player played in one match) and 1 bonus
In the month of November, the team scored 4 points (the player did not play any match) - no bonus
18. The club provided the following payment receipts:
 - PLN 6,557.74 to the player, on 5 January 2022;
 - PLN 7,607.52 to the player, on 12 November 2021;
 - PLN 5,629.20 to the player, on 15 October 2021;
 - EUR 1,410 to the player, on 27 June 2022 (receipt in Polish only)
19. In his replica, the player denied that he was not authorised to leave the club in January 2022, as he argued that he returned to Spain in order continue with his treatment regarding his injury during the winter break.

20. As to the payable bonuses, the player considered that he sufficiently met his burden of proof and underlined that the bonuses are not related to his effective participation in the team.
21. As to the payments, the player considered that the club should have respected the applicable exchange rates.
22. In the opinion of the player, the club fabricated a plan to terminate his contract.
23. As final comments, the club explained that it was under a new management and explained that it is willing to settle the manner amicably.

II Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *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 presented to FIFA on 20 May 2022 and submitted for decision on 4 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.
2. Subsequently, the Chamber referred to art. 2 par. 1 and art. 24 par. 1 lit. a) of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players (June 2022 edition), it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Spanish player and a Polish club.
3. Subsequently, 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 (June 2022 edition), and considering that the present claim was lodged on 20 May 2022, the June 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

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

c. Admissibility

5. The Chamber noted, *in limine litis*, that the present matter concerns an employment agreement concluded between the parties (cf. point I 1 above), as well as to an image rights agreement (cf. point I 3 above).
6. In view of the above, the Chamber referred to the jurisprudence of the Football Tribunal, according to which, as a general rule, if there are separate agreements, FIFA tends to consider the agreement on image rights as such and does not have the competence to deal with it. However, the Chamber pointed-out that such conclusion might be different if specific elements of the separate agreement suggest that it was in fact meant to be part of the actual employment relationship. In the cases at hand, such elements appear to exist.
7. In this regard, the Chamber analyses art 7 par. 4 of the image rights agreement, and observed that it provides for the payment of medical insurance, which is an element that usually refers to employment contract.

8. Moreover, the Chamber also took into account of the fact that, during the season 2021-22, the Respondent participated in the Polish III liga, i.e. the country's fourth tier. The Chamber considered that, at this level, it is unlikely that the club commercialized the player's image rights.
9. In addition, the Chamber also observed that the club did not submit any comment as to the legal nature of the so-called "image rights agreement".
10. As a result, the Chamber established that it cannot consider the image rights agreements as such, but rather as an additional agreement to the employment contract instead. Hence, the Chamber confirmed that it is competent to examine the entire dispute, including the so-called "image rights agreement", which is *de facto*, part of the employment contract concluded between the parties.

d. Merits of the dispute

11. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on 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.

i. Main legal discussion and considerations

12. The Chamber recalled that, on 1 July 2021, the parties concluded an employment contract valid as from the date of signature until 30 June 2023.
13. The Chamber then noted that the Claimant lodged a claim before FIFA against the Respondent, arguing that, on 21 January 2021, he received a termination notice by means of which the club terminated his contract due to, in particular, *"unexcused absence in, among others, three training units on the days: 10.01.2022, 11.01.2022, 12.01.2022, 13.01.2022 without justifying in writing his absence."*
14. On the other hand, the Chamber took note of the position of the Respondent, which confirmed said termination, while adding that the termination was sent via courier on 14 January 2022 but that the player never picked it up and was returned to the club.
15. In view of the above, the Chamber understood that the main legal issue at stake is to establish whether the club had a valid reason to terminate the contract with the reasons established above.
16. In this respect, and as a preliminary note, the Chamber was eager to emphasise that only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria, which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to ensure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an ultima ratio measure.

17. In this respect, and bearing in mind the criteria of ultima ratio, the Chamber was of the firm opinion that, even if the player would have been absent for “three training units” in January 2022, in any case, said absences could not justify an early termination of the contract, particularly considering that they occurred in a period that traditionally overlaps with the winter break. In addition, the Chamber noted that the club did not provide any convincing evidence to prove that the player was warned or put in default as to his alleged absences.
18. In view of all of the above, and in accordance with its well-established jurisprudence for similar cases, the Chamber unanimously concluded that the club terminated the contract without just cause and that the club is to be held liable for the early termination of the contract.

ii. Consequences

19. Having stated the above, the members of the Chamber turned its attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
20. Before entering into the calculation of the payable compensation, the Chamber underlined that the player is entitled to his outstanding dues until the termination of the contract, i.e. until January 2022.
21. In this regard, the Chamber observed that the Claimant requested the payment of PLN 17,203.53 as outstanding remuneration (cf. point I 7 above), whereas, in its reply, the club provided a series of receipts to prove the alleged payments.
22. On this note, the Chamber underlined that, according to the two contracts governing the employment relationship between the parties, the player was entitled to a monthly remuneration of PLN 7,650 (PLN 2,800 arising from the employment contract + PLN 4,850 arising from the so-called image rights agreement)
23. As a result, the Chamber first analysed the receipts and compared them to the claimed amounts, and arrived to the conclusion that the amount of PLN 6,238.53, corresponding to unpaid amounts between July 2021 until November 2021, remains outstanding.
24. In addition, the Chamber observed that the club failed to pay the entire salary of December 2021 (PLN 7,650).
25. Consequently, in strict application of the principle of *pacta sunt servanda*, the Chamber established that the Respondent has to pay to the Claimant, the total outstanding amount of PLN 13,888.53 (i.e. PLN 6,238.53 + PLN 7,650), as mentioned above.
26. Moreover, taking into account the request of the Claimant as well as the longstanding jurisprudence in this regard, the Chamber decided to award 5% interest p.a. over said amount as from the due date.
27. The Chamber then considered that Claimant's request for the payment of bonuses, as it observed that the contract stipulated that “*the player shall receive EUR 100 (...) as a bonus for every 3 points obtained by the Team in a championship match, but only when the Team wins at least 6 points in a given month.*”

28. Following the information provided the Claimant, the Chamber noted that, accordingly, the Claimant would be entitled to the following:

August: one win, does not meet the requirement for bonus (minimum of 2 wins)

September: 3 wins, i.e. EUR 100*3 = EUR 300

October: 4 wins, i.e. EUR 100*4 = EUR 400

November: 2 wins, i.e. EUR 100*2 = EUR 200

Total: EUR 900

29. Consequently, in strict application of the principle of *pacta sunt servanda*, the Chamber established that the Respondent has to pay to the Claimant, the total outstanding bonuses in the amount of EUR 900.
30. Moreover, taking into account the request of the Claimant as well as the longstanding jurisprudence in this regard, the Chamber decided to award 5% interest p.a. over said amount as from the due dates (i.e. at the end of each month).
31. In addition, the Chamber noted that the Claimant requested the payment of EUR 384.97 as medical costs and observed that he supported said request with sufficient documentary evidence.
32. On the other hand, the Chamber observed that the Respondent did not contest this request.
33. In this regard, the Chamber referred to the contract, which established that the club committed to "*Provide treatment in case of injuries arising exclusively from participation in training, official matches, friendly matches or from illness*".
34. Thus, also in strict application of the principle of *pacta sunt servanda*, the Chamber established that the Respondent has to pay to the Claimant, the reimbursement of said medical costs, in the amount of EUR 384.97.
35. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
36. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract.
37. As a consequence, the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-

exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.

38. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract until its term (i.e. from January 2022 until 30 June 2023). Consequently, the Chamber concluded that the amount of PLN 137,700 (i.e. 18*PLN 7,650) serves as the basis for the determination of the amount of compensation for breach of contract.
39. In continuation, the Chamber verified whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the Chamber as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be considered in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
40. In this respect, the Chamber noted that the player remained unemployed since the unilateral termination of the contract.
41. The Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which, in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.
42. In this respect, the Chamber decided to award the player compensation for breach of contract in the amount of PLN 137,700, corresponding to the residual value of the contract.
43. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% p.a. as of the date of claim until the date of effective payment.

iii. Compliance with monetary decisions

44. Finally, taking into account the applicable Regulations, the Chamber 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.
45. In this regard, the Chamber 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.
46. Therefore, bearing in mind the above, the Chamber decided that the club must pay the full amount due (including all applicable interest) to the player within 45 days of notification of the decision, failing which, at the request of the creditor, 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 club in accordance with art. 24 par. 2, 4, and 7 of the Regulations.

47. The club shall make full payment (including all applicable interest) to the bank account provided by the player in the Bank Account Registration Form.
48. 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. 24 par. 8 of the Regulations.

e. Costs

49. The Chamber 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 Chamber decided that no procedural costs were to be imposed on the parties.
50. Furthermore, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
51. Lastly, the Chamber concluded its deliberations by rejecting any other requests for relief made by any of the parties.

III Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Raul Aleman Santana, is admissible.
2. The claim of the Claimant is partially accepted.
3. The Respondent, Club Sportowy Unia Janikowo, has to pay to the Claimant, the following amounts:
 - **PLN 13,888.53 as outstanding remuneration plus interest** as follows:
 - 5% interest p.a. over the amount of PLN 6,238.53 as from 1 December 2021 until the date of effective payment;
 - 5% interest p.a. over the amount of PLN 7,650 as from 1 January 2022 until the date of effective payment;
 - **EUR 900 as outstanding bonuses, plus interest** as follows:
 - 5% interest p.a. over the amount of EUR 300 as from 1 October 2021 until the date of effective payment;
 - 5% interest p.a. over the amount of EUR 400 as from 1 November 2021 until the date of effective payment;
 - 5% interest p.a. over the amount of EUR 400 as from 1 December 2021 until the date of effective payment.
 - **EUR 384.97 as outstanding medical costs**
 - **PLN 137,700 as compensation for breach of contract without just cause plus 5% interest p.a.** as from 20 May 2022 until the date of effective payment.
4. Any further claims of the Claimant are rejected.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. 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 banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
 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 three entire and consecutive registration periods.
7. 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.
8. 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

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