

Decision of the Dispute Resolution Chamber

passed on 21 July 2022

regarding an employment-related dispute concerning the player Adama Traore

BY:

Frans de Weger (the Netherlands), Chairperson
Roy Vermeer (the Netherlands), member
Alejandro Atilio Taraborelli (Argentina & Italy), member

CLAIMANT:

Adama Traore, Mali
Represented by Mr Sami Dinç

RESPONDENT:

Hatayspor Kulübü Derneği, Turkey
Represented by Mr İsmail Coşkun

I. Facts of the case

1. On 11 September 2020, the Malian player, Adama Traore (hereinafter: *the Claimant*), and the Turkish club, Hatayspor Kulübü Derneği (hereinafter: *the Respondent*) signed an employment contract valid as from the date of signature until the end of the 2021-2022 season (hereinafter: *the Contract*).
2. According to the information available in the Transfer Matching System (TMS), the season 2021-2022 in Turkey runs as from 1 July 2021 until 31 May 2022.
3. In accordance with the Contract, the Respondent undertook to pay to the Claimant *inter alia* an annual salary of EUR 500,000, payable in ten monthly instalments of EUR 50,000 that fell due on the last day of the following respective month, as well as an “advance payment” of EUR 200,000, payable on 31 July 2021.
4. By correspondence dated 6 May 2022, the Claimant put the Respondent in default of payment of EUR 200,000, corresponding to four outstanding monthly salaries for the period between January 2022 and April 2022, setting a time limit expiring on 16 May 2022 in order to remedy the default.

II. Proceedings before FIFA

5. On 20 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

6. According to the Claimant, the Respondent failed to comply with its financial obligations under the Contract by not paying four monthly salaries for the period between January 2022 and April 2022, in the total amount of EUR 200,000.
7. The Claimant argued that, in accordance with the general legal principle of *pacta sunt servanda*, the outstanding amounts must be paid by the Respondent.
8. The Claimant requested payment of said amounts, with the application of interest at the standard rate of 5% *p.a.* as from the respective due dates of the unpaid instalments until the date of effective payment.
9. Lastly, the Claimant requested that any procedural and legal fees arising from the proceedings at hand shall be paid by the Respondent.

b. Position of the Respondent

10. In its response to the claim, the Respondent briefly acknowledged the unpaid amounts, justifying said non-payment with the economic situation in Turkey and, in particular, the depreciation of the local currency, the Turkish Lira.
11. The Respondent, therefore, only requested a reduction of the amounts payable.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

12. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) 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 21 July 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.
13. Subsequently, the members of the Chamber 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 Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Malian player and a Turkish club.
14. 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 (July 2022 edition), and considering that the present claim was lodged on 20 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

15. 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 TMS.

c. Merits of the dispute

16. 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

17. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute the lawfulness of the non-payment of certain financial obligations under the Contract, namely EUR 200,000, corresponding to the remuneration for the period between January 2022 and April 2022.
18. In this context, the Chamber noted that neither party contested the non-payment of the amounts claimed by the Claimant. Therefore, it acknowledged that its task was to determine, based on the arguments presented by the parties, whether the Respondent had a valid justification for not having complied with its financial obligations.
19. The Chamber took note of the Respondent's argument that the salaries owed to the Claimant remained unpaid due to financial difficulties caused by the poor economic situation in Turkey, and, in particular, the depreciation of the Turkish Lira.
20. In this respect, the Chamber wished to point out that the Respondent failed to submit any evidence corroborating the assertion that the Turkish Lira had indeed depreciated as claimed, thereby failing to meet the burden of proving that the payments under the Contract could be challenged.
21. Consequently, the Chamber concluded that, as no situation of force majeure could be established in the present matter, the Respondent has to comply with the contractually agreed payments as stipulated per the Contract.
22. In view of the foregoing, and bearing in mind the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the Contract concluded between the parties, namely EUR 200,000.

ii. Consequences

23. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
24. In this respect, the Chamber recalled that the amount claimed by the Claimant, i.e. EUR 200,000, corresponding to the salaries for the period between January 2022 and May 2022, remained uncontested by the Respondent.
25. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay the Claimant the amounts claimed as outstanding under the Contract, in total EUR 200,000, as detailed above.
26. In addition, taking into account the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amounts as from the following dates:
 - On the amount of EUR 50,000, 5% *p.a.* as from 1 February 2022 until the date of effective payment;
 - On the amount of EUR 50,000, 5% *p.a.* as from 1 March 2022 until the date of effective payment;
 - On the amount of EUR 50,000, 5% *p.a.* as from 1 April 2022 until the date of effective payment;
 - On the amount of EUR 50,000, 5% *p.a.* as from 1 May 2022 until the date of effective payment.

iii. Art. 12bis of the Regulations

27. In continuation, the Chamber referred 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.
28. To this end, the Chamber confirmed that the Claimant put the Respondent in default of payment of the amounts sought, and that, of those, three instalments in the total amount of EUR 150,000 had fallen due more than 30 days beforehand. Moreover, the Chamber confirmed that the Claimant granted the Respondent a 10-day deadline to cure such breach.

29. Accordingly, the Chamber confirmed that the club had delayed a due payment without a prima facie contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations were met in the case at hand.
30. The Chamber further established that, by virtue of art. 12bis par. 4 of the Regulations, it had the competence to impose sanctions on the Respondent. On account of the above and bearing in mind that this was the third offence committed by the Respondent within the last two years (20-00978, passed on 6 October 2020; 20-01696, passed on 9 February 2021), the Chamber decided to impose a fine in the amount of USD 15,000 on the former, in accordance with art. 12bis par. 4 lit. c) of the Regulations.
31. In this connection, the Chamber highlighted 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.

iv. Compliance with monetary decisions

32. 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.
33. In this regard, the DRC 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.
34. Therefore, bearing in mind the above, the DRC 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.
35. 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.
36. The DRC 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

37. 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.
38. Likewise and for the sake of completeness, 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.
39. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

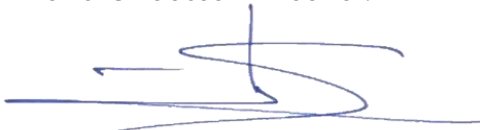
1. The claim of the Claimant, Adama Traore, is partially accepted.
2. The Respondent, Hatayspor Kulübü Derneği, has to pay to the Claimant the following amount:
 - EUR 50,000 as outstanding remuneration plus 5% interest *p.a.* as from 1 February 2022 until the date of effective payment;
 - EUR 50,000 as outstanding remuneration plus 5% interest *p.a.* as from 1 March 2022 until the date of effective payment;
 - EUR 50,000 as outstanding remuneration plus 5% interest *p.a.* as from 1 April 2022 until the date of effective payment;
 - EUR 50,000 as outstanding remuneration plus 5% interest *p.a.* as from 1 May 2022 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. The Respondent is ordered to pay a fine of USD 15,000 to FIFA **within 30 days** as from the notification of this decision to the following bank account, with clear reference to the case FPSD-6118:

UBS Zurich
Account number 230-366677.61N (FIFA Players' Status)
Clearing number 230
IBAN: CH12 0023 0230 3666 7761 N
SWIFT: UBSWCHZH80A
Please mention the applicable reference number

5. Full payment of the amounts mentioned in point 2. (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 of the amounts mentioned in point 2. (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 the ban shall be of 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 article 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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