

Decision of the Dispute Resolution Chamber

passed on 4 August 2022

regarding an employment-related dispute concerning the player
Mehdi Zeffane

BY:

Omar Ongaro (Italy), Deputy Chairperson
Laurel Vaurasi (Fiji), member
Khadija Timera (Senegal), member

CLAIMANT / COUNTER-RESPONDENT:

Mehdi Zeffane, Algeria
Represented by Mr Jean-Michel Ageron

RESPONDENT / COUNTER-CLAIMANT:

Yeni Malatyaspor, Turkey
Represented by Mr Burak Çakir

I. Facts of the case

1. On 14 January 2022, the player Mehdi Zeffane (hereinafter: *the player*) and the club Yeni Malatyaspor (hereinafter: *Yeni*) concluded an employment contract (hereinafter: *the contract*) valid as from the date of signature until 31 May 2023.
2. According to clause 3 of the contract, the player was entitled to the following remuneration:
 - a. 2021/2022 season:
 - Total of EUR 203,500, payable as follows:
 - a. EUR 40,700 as down payment on 15 January 2022;
 - b. EUR 162,800 as salaries, as follows:
 - EUR 40,700 on 29 February 2022;
 - EUR 40,700 on 30 March 2022;
 - EUR 40,700 on 30 April 2022;
 - EUR 40,700 on 30 May 2022;
 - Performance bonuses for the 2nd half of the 2021/2022 season:
 - a. EUR 17,500 “if player play starting 15 official league games”
 - b. EUR 5,000 “if player reaches 5 points within official league games (1 goal 1 point = 1 assist 1 point)”.
 - “All payments agreed in this contract are net”.
 - b. 2022/2023 season:
 - Total of EUR 456,996, payable as follows:
 - a. EUR 50,700 as down payment on 31 August 2022;
 - b. EUR 406,296 as salaries, as follows:
 - EUR 45,144 on 30 September 2022;
 - EUR 45,144 on 30 October 2022;
 - EUR 45,144 on 31 November 2022;
 - EUR 45,144 on 30 December 2022;
 - EUR 45,144 on 30 January 2022;
 - EUR 45,144 on 28 February 2022;
 - EUR 45,144 on 30 March 2022;
 - EUR 45,144 on 30 April 2022;
 - EUR 45,144 on 30 May 2022;
 - Performance bonuses for the 2nd half of the 2021/2022 season:
 - a. EUR 20,000 “if player play starting 30 official league games”
 - b. EUR 10,000 “if player reaches 10 points within official league games (1 goal 1 point = 1 assist 1 point)”.
 - “All payments agreed in this contract are net”.

3. The Special Provisions par. 10 of the contract (“The player’s right to unilaterally terminate the contract based on overdue payables”) stipulated that:
“The parties herewith decide and agree upon what constituted ‘just cause’ for termination of the present employment contract based on overdue payment. In case of the club unlawfully failing to pay the player at least 2 (two) monthly salaries on their respective due dates and thus has overdue amounts payable to the player that corresponds to at least (2) two monthly salaries the player will be deemed to have a just cause to terminate the employment contract provided that he puts the club in default in writing by means of the below-seen communication ways as set forth under clause 11 in the present employment contract and grants a deadline of at least 15 days in order for the club to fully comply with its financial liabilities towards the player. The club’s failure to do so despite the player’s service the default letter on the club in any duly manner shall result in the confidence of the player for the continuation of employment relationship being damaged and as such it shall grant to the player right to terminate the contract with just cause. The club’s having overdue payment that corresponds at least to 2 (two) monthly salaries is set as condition precedent in order for the player to put the club into default as regards the overdue payables”.
4. Furthermore, the Special Provisions par. 11 of the contract (“Correspondence”) stipulated that the parties’ contact details for communication are:
*“The club’s fax: 0442 234 5612
The club’s email: info@yenimalatayaspor.org.tr
The player’s email: mehdizeffane2@gmail.com”*
5. Finally, clause 9 of the contract (“Disputes”) stipulated the following:
“Disputes that may arise between the parties cannot be resolved exclusively by the FIFA Dispute Resolution Board (DRC). Final decision of FIFA, within 21 days from the date of decision, before the Court of Arbitration for Sports (CAS) can be appealed. All proceedings before the CAS will be conducted in English”.
6. On 13 March 2022, the player put the club in default of payment of the entirety of his salaries due as per the contract up until that moment. The player grants the club 15 days to remedy the default, *“in accordance with article 10 of his employment contract”*, failing which he would be entitled to terminate the employment contract (sent by an email to burakcakir@yenimalatayaspor.org.tr).
7. On 30 March 2022, the player unilaterally terminated his contract with Yeni in writing, as he did not receive an answer or any payments since his default notice of 13 March 2022.
8. On 14 June 2022, the player concluded a new employment contract with the French club SASP Clermont Foot 63, valid from 1 July 2022 until the end of the 2023/2024 season, according to which he is entitled to receive *inter alia* a monthly salary of EUR 35,000.

II. Proceedings before FIFA

9. On 4 May 2022, the player filed the claim at hand before FIFA. On 9 June 2022, Yeni lodged a counterclaim before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant / Counter-Respondent / the player

10. The player lodged a claim against Yeni before FIFA for breach of contract.

11. In particular, the player claimed that from the very start of the contract he never received any payments from Yeni. Until the date of termination, he should have received the amount of EUR 40,700 due on 15 January 2022, EUR 40,700 due on 29 February 2022 and EUR 40,700 due on 30 March 2022.

12. The player claimed to have complied with the Special Provisions par. 10 of the contract and with art. 14bis of the RSTP in his default notice to the club. Thus, he deemed to have had a just cause to unilaterally terminate the contract on 30 March 2022.

13. Based on the foregoing, the player requested the DRC to:

a. Order the club to pay outstanding remuneration in the total amount of EUR 122,100 net, broken down as follows:

- EUR 40,700 due on 15 January 2022,
- EUR 40,700 due on 29 February 2022 and
- EUR 40,700 due on 30 March 2022.
- Plus interest of 5% p.a. as from the due dates

b. Order the club to pay compensation as follows:

- EUR 538,396 net corresponding to the residual amount of the contract
 - EUR 81,400 for the rest of season 2021/2022, i.e. EUR 40,700 x 2, for April and May;
 - EUR 456,996 for the entire season 2022/2023;
- EUR 52,500 as lost profit related to performance bonuses, i.e.:
 - EUR 17,500
 - EUR 5,000
 - EUR 20,000
 - EUR 10,000
 - Plus interest of 5% p.a. as from the date of claim.

b. Position of the Respondent / Counter-Claimant / Yeni

14. In its reply, the club first rejects the competence of FIFA to deal with the present dispute, based on clause 9 of the contract.
15. As to the substance, the club claimed it never received the player's default notice of 13 March 2022. In addition, the club referred to par. 11 of the Special Provisions of the contract ("Correspondence") and pointed out that the player has not sent his default notice to the club's contact details therein indicated. Thus, the club claimed that the default notice of 13 March 2022 was invalid, as it was not sent to the email address indicated in the aforementioned provision of the contract.
16. The club understands that the player terminated the contract without just cause and lodged a counterclaim against him in the following terms:

"In light of all the above, the club respectfully requests the FIFA Tribunal to:

- a) declare the Claim groundless for lack of just cause;*
- b) dismiss Claims of Oussame Hdddadi in the merits for the reasons exposed in this the Answer & Counterclaim;*
- c) in any event, admit the present Counterclaim and:*
 - c.1) order that Mehdi Zeffane pays to the Club ;*
 - The Player must pay in favour of YeniMalatyaspor, as compensation, the amount of EUR 538.396,00.-Euro".*

c. Position of the Claimant / Counter-Respondent / the player

17. In his reply to the counterclaim, the player first insisted on the competence of FIFA. He refers to clause 9 of the contract and understands that the latter in fact confirmed that FIFA can deal with the present dispute. Thus, his claim is admissible.
18. The player also argued that the club's arguments as to the substance are made in bad faith. Not only he acted in perfect accordance with art. 14bis of the RSTP, but he also pointed out that the default notice was sent to the professional email of the very counsel representing the club in the present case, i.e. Mr Burak Cakir, used also to communicate with FIFA in the case at hand. Thus, this argument of the club must be rejected.
19. Finally, the player amended his original claim in view of the fact that he found a new employment contract, by means of which he was able to partially mitigate his damages. From the amount of compensation originally claimed, the player deducted EUR 181,500, corresponding to the remuneration he is entitled to earn with his new club from July 2022 to May 2023 (i.e. EUR 16,500 net x 11 months). The mitigated compensation requested from Yeni is EUR 356,896 (i.e. EUR 538,396 – EUR 181,500). The player also requested from

Yeni the payment of additional compensation, corresponding to three monthly salaries, i.e. 3 x EUR 45,144 = EUR 135,432.

d. Position of the Respondent / Counter-Claimant / Yeni

20. In its brief final comments to the claim, Yeni stated that the player's contractual "*situation was not informed to FIFA by the respondent in bad faith.*
RESULT AND CLAIM: • For the reasons explained above, we, as Yeni Malatya Spor, hereby claim; inform us regarding claimant contractual situation".

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

21. 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 04 May 2022 and submitted for decision on . 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.
22. 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 an Algerian player and a Turkish club.
23. Furthermore, in accordance with art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players (July 2022) edition, the Chamber observed that the contract between the player and Yeni did not contain a provision by way of which the parties to said contract explicitly opted for the dispute to be decided by another decision-making body than the DRC.
24. 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), and considering that the present claim was lodged on 4 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

25. 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. Merits of the dispute

26. 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

27. 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 justice of the early termination of the contract by the player, based on the alleged non-payment of certain financial obligations by the Club as per the contract, in accordance with art. 14bis of the Regulations.
28. In this context, the Chamber acknowledged that its task was to determine, based on the evidence presented by the parties, whether the claimed amounts had in fact remained unpaid by Yeni and, if so, whether the formal pre-requisites of art. 14bis of the Regulations had in fact been fulfilled.
29. The Chamber then referred to the wording of art. 14bis par. 1 of the Regulations, in accordance with which, if a club unlawfully fails to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s).
30. The Chamber noted that the Player claims not having received his remuneration corresponding to the period between January 2022 and March 2022. Furthermore, the Chamber noted that the player has provided written evidence of having put Yeni in default on 13 March 2022, i.e. at least 15 days before unilaterally terminating the contract on 30 March 2022.

31. On one hand, the Chamber took note of the allegation submitted by Yeni that the default notices allegedly sent by the player were never received by the former. In this respect, the Chamber established that the player had provided sufficient evidence regarding the service of the respective default notices, by including not only the letters themselves, but also information regarding the dates and the e-mail addresses to which said letters were sent, which indeed corresponded with the official address of Yeni stipulated under art. 12 of the contract. Moreover, and for the sake of completeness, the Chamber noted that said e-mail address corresponded to the official e-mail address of Yeni entered into TMS.
32. The Chamber also noted that in the case at hand Yeni bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. Nonetheless, the members of the Chamber highlighted that Yeni did not dispute not having paid the player the requested amounts. What is more, the Chamber noted that no documentation related to any payments made to the player were provided by Yeni.
33. In view of the aforementioned, the Chamber was able to establish that, at the time the player terminated the contract, Yeni had failed to pay player's remuneration in the amount of EUR 122,100, corresponding to three monthly salaries of EUR 40,700 each.
34. Thus, the Chamber concluded that the Player had a just cause to unilaterally terminate the contract, based on art. 14bis of the Regulations and rejected the counterclaim of Yeni.

ii. Consequences

35. 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 Yeni.
36. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, are equivalent to three monthly salaries under the contract, amounting to EUR 122,100.
37. 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 to the Claimant the amounts which were outstanding under the contract at the moment of the termination, i.e. EUR 122,100 (i.e. EUR 40,700 times three).
38. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest over the respective amounts as follows:
 - EUR 40,700 plus 5% interest *p.a.* as from 16 January 2022 until the date of effective payment;

- EUR 40,700 plus 5% interest *p.a.* as from 1 March 2022 until the date of effective payment;
 - EUR 40,700 plus 5% interest *p.a.* as from 1 April 2022 until the date of effective payment.
39. 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.
40. In application of the relevant provision, the Chamber held that it first of all had to clarify as to 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. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
41. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player 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.
42. 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 contract from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of EUR 538,396 (i.e. EUR 81,400 for the season 2021/2022 and EUR 456,996 for the season 2022/2023) serves as the basis for the determination of the amount of compensation for breach of contract.
43. In continuation, the Chamber verified as to 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 DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.

44. Indeed, the player found employment with French club SASP Clermont Foot 63. In accordance with the pertinent employment contract, the player was entitled to approximately EUR 35,000 per month. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of EUR 385,000 that is, EUR 35,000 times eleven.
45. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason i.e. overdue payables by the club, and therefore decided that the player shall receive additional compensation.
46. In this respect, the DRC decided to award the amount of additional compensation of EUR 122,100, i.e. three times the monthly remuneration of the player.
47. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that Yeni must pay the amount of EUR 275,496 to the player (i.e. EUR 538,396 minus EUR 385,000 plus EUR 122,100), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
48. 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 4 May 2022 until the date of effective payment.

iii. Compliance with monetary decisions

49. 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.
50. 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.
51. 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.

52. 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.
53. 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.

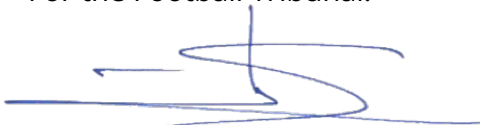
d. Costs

54. 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.
55. 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.
56. 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 / Counter-Respondent, Mehdi Zeffane, is admissible.
2. The claim of the Claimant / Counter-Respondent is partially accepted.
3. The Respondent / Counter-Claimant, Yeni Malatyaspor, has to pay to the Claimant / Counter-Respondent, the following amount(s):
 - EUR 40,700 as outstanding remuneration plus 5% interest *p.a.* as from 16 January 2022 until the date of effective payment;
 - EUR 40,700 as outstanding remuneration plus 5% interest *p.a.* as from 1 March 2022 until the date of effective payment;
 - EUR 40,700 as outstanding remuneration plus 5% interest *p.a.* as from 1 April 2022 until the date of effective payment;
 - EUR 275,496 as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 4 May 2022 until the date of effective payment.
4. Any further claims of the Claimant / Counter-Respondent are rejected.
5. The claim of the Respondent / Counter-Claimant is rejected.
6. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
7. 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.
8. 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.
9. 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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