

Decision of the Dispute Resolution Chamber

passed on 12 April 2023

regarding an employment-related dispute concerning
the player **Martin Andrés Gimenez**

BY:

Angela COLLINS (Australia)

CLAIMANT:

Martin Andrés Gimenez, Argentina

Represented by Dr Diego Ariel Raguseo & Dr Eduardo Alberto Martins

RESPONDENT:

OF Ierapetras 1970, Greece

I. Facts of the case

1. The player Martin Andrés Gimenez and the club OF Ierapetras 1970 concluded an employment contract valid as from 30 August 2021 until 30 June 2022.
2. The contract was extended until 30 June 2023 via a “private agreement”.
3. According to art. 4 par. 1, the player was entitled to a monthly salary of EUR 726, as well as to “a Christmas gift (an amount equal to the monthly regular salary and an Easter gift (an amount equal to half of the monthly regular salary), as well as a leave allowance (an amount equal to half of the monthly regular salary).
4. The contract further stipulated the following:
“10. Dispute resolution,
Any dispute between parties is resolved by the Primary Committee for the Resolution of Financial Disputes and in the second instance by the Court Arbitration of the H.F.F. Disputes concerning foreign football players may be resolved by the relevant FIFA bodies.”
5. On 5 December 2022, the player served a default notice indicating that the amount of EUR 7,260 remains outstanding, and granted 15 days to remedy the default.
6. On 21 December 2022, the player sent a termination notice referring to art. 14 bis of the Regulations as well as to his previous default notice.
7. On 21 February 2023, the player informed FIFA that he remained unemployed.

II. Proceedings before FIFA

8. On 19 January 2023, the player lodged a claim before FIFA and requested the payment of the following amounts:
 - EUR 12,342 as outstanding remuneration, corresponding to his salaries from February to December 2022, as well as to three additional salaries for Easter, Christmas and Holidays. The player thus considered that the debt corresponds to 16 salaries, plus 5% interest p.a.
 - EUR 6,804 as compensation for breach of contract without just cause, corresponding to six salaries plus 3 additional salaries for Easter, Christmas and holidays.
9. In its reply, the Respondent contested the competence of FIFA .
10. The Respondent considered that the claim is *res iudicata* due to the fact that the contract includes a clear and exclusive jurisdiction clause in favour of the Greek NDRC.
11. The club argued that CAS has already confirmed that the relevant deciding body of the HFF

(Hellenic Football Federation) fulfils the requirements of equal representation and of an independent chairman and guarantees fair proceedings,

12. As to the substance, the club argued that the total debt is EUR 3,720.
13. The club provided a series of payment receipts in Greek language only.
14. In the opinion of the club, the player's basic salary is EUR 726 gross or EUR 634 net.
15. The club argued that it *"has paid the total amount of 5.016 euros instead of the amount of 8.736 euros until the time the player left without permission."*
16. In his replica, the player insisted in the competence of FIFA, and underlined that clause 10 of the contract stipulates that disputes concerning foreign players can be resolved before FIFA.
17. The player further argued that the club did not prove that the Greek NDRC complies with the principles of Circular 1010.
18. As to the alleged payments, the claimant insisted that his salary was EUR 726, and rejected the payment receipts from the club since they are not in an official language, and are not signed by the player.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

1. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 15 February 2023 and submitted for decision on 12 April 2023. Taking into account the wording of art. 34 of the October 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 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 (October 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 Argentinean player and a Greek club.
3. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (October 2022 edition), and considering that the present claim was lodged on 15 February 2023, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Admissibility

4. The Single Judge further noted that the Respondent contested the competence of FIFA's deciding bodies in favour of the National Dispute Resolution Chamber of Greece (hereinafter: the *NDRC of Greece*), alleging that the latter is competent to deal with any dispute deriving from the relevant employment contract.
5. The Single Judge also noted that the Claimant insisted on the competence of FIFA to adjudicate the present claim.
6. Taking into account all the above, the Single Judge emphasised that in accordance with art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players, FIFA is, in principle, competent to hear an employment-related dispute between a club and a player of an international dimension. Nevertheless, the parties may explicitly opt in writing for such dispute to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and

clubs. Equally, the Single Judge referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.

7. In this context, Single Judge pointed out that it should first analyse whether the employment contract at the basis of the present dispute contained a clear and exclusive jurisdiction clause in favour of the NDRC of Greece.
8. In this respect, the Judge recalled the contents of clause 10 of the contract concluded between the parties, which stipulated the following:

“10. Dispute resolution,

Any dispute between parties is resolved by the Primary Committee for the Resolution of Financial Disputes and in the second instance by the Court Arbitration of the H.F.F. Disputes concerning foreign football players may be resolved by the relevant FIFA bodies.”

9. In this respect, the Single Judge noted that the second part of the clause states that if the dispute concerns foreign football players (as it is the case), it may be resolved by the relevant FIFA bodies.
10. Given the clear contents of the aforementioned clause, the Single Judge confirmed that he is competent to deal with the present matter.

c. Burden of proof

11. 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 it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

d. Merits of the dispute

12. Its competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge 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 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

13. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the parties concluded an employment contract valid as from 30 August 2021, which was subsequently extended until 30 June 2022.

14. Then, the Judge observed that the player filed a claim with FIFA requesting payment for outstanding remuneration and compensation for breach of contract without just cause. In particular, the Judge noted that the player explained that he served a default notice on 5 December 2022, indicating that the club owed him EUR 7,260, and later sent a termination notice on 21 December 2022. In his claim, the player argued that the club failed to pay "16 salaries", from February 2023 to December 2023. This amount includes three alleged salaries for Easter, Christmas and holidays.
15. The Judge also took note of the position, of the club, which argued that the total debt owed to the player is only EUR 3,720, and that the player's basic salary is EUR 726 gross or EUR 634 net. The Club also argued that it paid EUR 5,016 instead of the owed amount of EUR 8,736 until the player left without permission. The Judge observed that the club provided a series of payment receipts in Greek language only.
16. In this context, the Single Judge acknowledged that her task was to determine, based on the evidence presented by the parties, whether the claimed amounts had in fact remained unpaid by the Respondent and, if so, whether the formal pre-requisites of art. 14bis of the Regulations had in fact been fulfilled.
17. On this note, and as to the receipts provided by the club, the Judge referred to 13 par. 1 of the Procedural Rules. Accordingly, *"Any submission to FIFA shall be made in English, Spanish, or French. Any submission to FIFA not made in one of the aforementioned languages will be disregarded."* Therefore, the Judge established that it could not take into account the documentation provided in this respect by the club.
18. Thereafter, and after duly reviewing the position of the parties, the Single Judge turned her attention to determining the exact amount owed by the club at the date of the termination of the contract, i.e. until 21 December 2022. The Judge noted in particular that following the contract, the player was entitled to receive a monthly salary of EUR 726. Additionally, the player was entitled to receive a Christmas gift, which is an amount equal to the monthly regular salary, an Easter gift, which is an amount equal to half of the monthly regular salary, and a leave allowance, which is an amount equal to half of the monthly regular salary.
19. Thus, the Single Judge observed, on the basis of the evidence on file and the position of the parties, that it could be established that the club failed to pay the player's salaries from February 2022 until December 2022 (i.e. $\text{EUR } 726 \times 11 = \text{EUR } 7,986$), as well as EUR 363 (Easter Pay), EUR 726 (Christmas Gift) and EUR 363 (Leave Allowance), for a total amount of EUR 9,438.
20. The Single Judge 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 obligations.

21. The Single Judge noted that it can be established that the player did not receive his remuneration corresponding to 11 months, whereas he also provided written evidence of having put the Respondent in default for at least 15 days before unilaterally terminating the contract.
22. Thus, the Single Judge concluded that the Claimant had a just cause to unilaterally terminate the contract, based on art. 14bis of the Regulations and that he is entitled to compensation.

ii. Consequences

23. Having stated the above, the Single Judge turned her attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
24. The Single Judge observed that the outstanding remuneration at the time of termination, as established before, was EUR 9,438.
25. As a consequence, and 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 at the moment of the termination, i.e. EUR 9,438.
26. In addition, taking into consideration the Claimant's request as well as the constant practice of the Football Tribunal in this regard, the Judge decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from the due dates until the date of effective payment.
27. Having stated the above, the Single Judge 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 Single Judge 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.
28. In application of the relevant provision, the Single Judge 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 Single Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
29. As a consequence, the Single Judge 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 Single Judge recalled that said provision provides for a non-

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

30. Bearing in mind the foregoing as well as the claim of the player, the Single Judge proceeded with the calculation of the monies payable to the player under the terms of the Single Judge from the date of its unilateral termination until its end date. In particular, the Judge noted that, from January 2023 until June 2023, the player would have earned EUR 4,900.50, i.e. 726 *6 (salaries) + EUR 363 (easter) + EUR 181.50 (half leave allowance).
31. Consequently, the Single Judge concluded that the amount of EUR 4,900.50 serves as the basis for the determination of the amount of compensation for breach of contract.
32. In continuation, the Single Judge 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.
33. The Single Judge noted, however that the player remained unemployed.
34. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Single Judge decided that the club must pay the amount of EUR 4,900.50 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
35. Lastly, taking into consideration the player's request as well as the constant practice of the Football Tribunal 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 the termination until the date of effective payment.

iii. Compliance with monetary decisions

36. 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.
37. 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.
38. 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.

39. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form.
40. 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.

e. Costs

41. 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.
42. 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.
43. Lastly, the Single Judge 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, Martín Andrés Giménez, is partially accepted.
2. The Respondent, Club OF Irapetras 1970, must pay to the Claimant the following amounts:

- **EUR 9,438 as outstanding remuneration** plus interest *p.a.* as follows:

Salaries:

- 5% interest *p.a.* over the amount EUR 726 of as from 1 March 2022 until the date of effective payment;
- 5% interest *p.a.* over the amount EUR 726 of as from 1 April 2022 until the date of effective payment;
- 5% interest *p.a.* over the amount EUR 726 of as from 1 May 2022 until the date of effective payment;
- 5% interest *p.a.* over the amount EUR 726 of as from 1 June 2022 until the date of effective payment;
- 5% interest *p.a.* over the amount EUR 726 of as from 1 July 2022 until the date of effective payment.
- 5% interest *p.a.* over the amount EUR 726 of as from 1 August 2022 until the date of effective payment.
- 5% interest *p.a.* over the amount EUR 726 of as from 1 September 2022 until the date of effective payment.
- 5% interest *p.a.* over the amount EUR 726 of as from 1 November 2022 until the date of effective payment.
- 5% interest *p.a.* over the amount EUR 726 of as from 1 December 2022 until the date of effective payment.
- 5% interest *p.a.* over the amount EUR 726 of as from 1 January 2023 until the date of effective payment.

Additional allowances:

- 5% interest *p.a.* over the amount EUR 363 (Easter Pay) of as from 1 April 2022 until the date of effective payment.
- 5% interest *p.a.* over the amount EUR 726 (Christmas Gift) of as from 1 January 2023 until the date of effective payment.
- 5% interest *p.a.* over the amount EUR 363 (Leave Allowance) of as from 1 January 2023 until the date of effective payment.

- **EUR 4,900.50 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 21 December 2022 until the date of effective payment.

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 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 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.
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 Governing the Football Tribunal).

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