FIFA
FOOTBALL TRIBUNAL

Decision of the Dispute Resolution Chamber

passed on 20 July 2023

regarding an employment-related dispute concerning the player Roman Golobart Benet

BY:

Clifford J. Hendel (USA & France), Chairperson
Alexandra Gomez Bruinewoud (the Netherlands & Uruguay), member
Mario Flores Chemor (Mexico), member

CLAIMANT:

Roman Golobart Benet, Spain
Represented by Mr Loizos Hadjidemetriou

RESPONDENT:

NEA Salamina Famagusta, Cyprus
Represented by Orphanides, Christofides & Co

I. Facts of the case

1. On 15 July 2021, the Spanish player Roman Golobart Benet (hereinafter: *Claimant* or *player*) and the Cypriot club NEA Salamina Famagusta (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *the Contract*) valid as from the date of signature until 31 May 2022.

2. The parties agreed that the Contract shall be renewed for a period of one year, provided that the Respondent would be promoted to the first division of Cypriot football at the end of the season 2021.

3. According to the Contract, the Respondent undertook to pay the Claimant the following remuneration:

   - *EUR 4,000 net for the season 2021/2022, payable in 10 equal instalments between August 2021 and May 2022;*
   - *EUR 5,000 net for the season 2022/2023 (if the Contract is extended), payable in 10 equal instalments between August 2022 and May 2023*

4. In accordance with art. 13 of the Contract, the parties agreed that "*any employment dispute between the club and the player shall fall under the exclusive jurisdiction of the National Dispute Resolution Chamber of the CFA and shall be resolved according to the applicable regulations of the CFA*."

5. On 15 July 2021, the Claimant and the Respondent signed an additional agreement (hereinafter: *the Agreement*), in accordance with which the Respondent undertook to pay the Claimant EUR 51,000 net for the season 2021-2022, and EUR 65,000 net for the season 2022-2023 in case of contractual renewal.

6. Lastly, in accordance with the Agreement, the Respondent undertook to provide the Claimant with a car and one flight ticket per season.

7. At an unspecified time in October 2021, the Claimant allegedly engaged in two separate incidents of "sporting indiscipline".

8. On 6 November 2021, the Claimant was shown a red card during a match for improper conduct towards the referee, as well as being sanctioned with a three-match ban and a fine. The Claimant was also sanctioned internally with a salary deduction by the club, following an investigation.

9. On 6 December 2021, the Claimant sent an apology letter to the Respondent's General Manager.

10. On 7 December 2021, the Respondent's General Manager forwarded said letter to the board of the Respondent via email, and in the same correspondence highlighted two alleged further incidents which took place purportedly in October 2021, for which the Claimant was "warned" by the club for "sporting indiscipline".

11. On 17 April 2022, the Claimant was substituted early from a match, and out of anger, left the bench halfway during the match, went to the dressing room and slammed the door behind him, damaging it in the process. The Claimant attended an internal disciplinary hearing, without further consequences.

12. On 30 April 2022, the Respondent secured promotion to the first division of Cypriot football.

13. On 27 May 2022, the Respondent unilaterally terminated the Contract, on the grounds of alleged gross misconduct on the part of the Claimant.

II. Proceedings before FIFA

14. On 3 April 2023, 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

15. In his claim, the player argued that the Respondent erroneously invoked just cause, due to the alleged "gross misconduct" of the Claimant, which, according to him, is insufficient to establish just cause.

16. The Claimant particularly argued that the incidents that took place, namely the red card in November 2021 and the damaging of the changing room door in April 2022, were isolated incidents which can collectively not be considered as "gross misconduct".

17. The Claimant further alleged that the Respondent is using the gross misconduct as an excuse to be able to register another foreign player instead of him.

18. Based on the above, the Claimant formulated the following request for relief:

- EUR 5,000 net as residual value of the Contract;
- EUR 65,000 net as residual value of the Agreement;
- EUR 6,000 net as accommodation allowance between June 2022 and May 2023, in accordance with the Agreement;
- EUR 500 corresponding to the cost of a flight ticket between Cyprus and Spain;
- Interest (unspecified).

b. Position of the Respondent

19. The Respondent firstly contested the jurisdiction of FIFA, arguing that the Contract provides for the exclusive jurisdiction of the Cypriot NDRC.

20. The Respondent in this respect argued that the principle of equal representation is met by the NDRC. A copy of the Regulations of the CFA was submitted. Thus, according to the Respondent, as the Cypriot NDRC is competent to hear the case at hand, FIFA should reject its own jurisdiction.

21. As to the merits, the Respondent outlined that it had just cause to terminate the Contract.

22. The Respondent argued that the Claimant had repeatedly misbehaved and been warned and/or sanctioned on four separate occasions:

    - Sporting indiscipline on 2 October 2021, "warned" by club president;
    - Sporting indiscipline on 30 October 2021, "warned" by club president;
    - Red card on 6 November 2021, sanctioned by CFA and internally by the Club;
    - Damage caused to changing room door, internal meeting scheduled, no further punishment.

23. The Respondent argued that these incidents were cumulatively sufficient to give rise to just cause to the termination of the Contract, particularly since the Contract explicitly provided for the termination thereof due to "gross misconduct".

24. The Respondent also highlighted that it complied with all its monetary obligations, although this was not contested by the Claimant.

25. In conclusion, the Respondent requested for the claim to be rejected, provided FIFA deems it has the competence to adjudicate.

c. Replica of the Claimant

26. In his replica, the Claimant contested vehemently that he had committed two disciplinary offences prior to 6 November 2021, and outlined that he was never informed or warned, as alleged by the club.

27. The Claimant also wished to emphasise that he was not sanctioned for the "minor" damage caused to the changing room door, and that he was never reprimanded appropriately, to the extent that his alleged misconduct was so serious to risk a premature contractual termination.

28. The Claimant equally insisted on the jurisdiction of FIFA, as he argued that the Cypriot players' union is not represented in the Cypriot NDRC.

29. Outside of the above, the Claimant reiterated his previous submissions.

d. Duplica of the Respondent

30. In its duplica, the Respondent emphasised that the Claimant refused to appoint members to the NDRC, despite being entitled to do so. In the absence of an appointment by itself, the President of the Cypriot Bar Association appointed members on the Union's behalf.

31. Outside of this, the Respondent reiterated all of its previous arguments.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

32. 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 3 April 2023 and submitted for decision on 20 July 2023. Taking into account the wording of art. 34 of the March 2023 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.

33. 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 (March 2023 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 player from Spain and a club from Cyprus.

34. Furthermore, the Chamber took note of the fact that the Respondent contested the competence of the Football Tribunal to adjudicate the present dispute in favour of the National Dispute Resolution Chamber of Cyprus) (hereinafter: the NDRC of Cyprus), alleging that the latter is competent to deal with any dispute deriving from the relevant employment contract, in accordance with art. 13 thereunder. Equally, the Chamber noted that the Claimant insisted on the jurisdiction of FIFA.

35. Taking into account all the above, the Chamber 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 Chamber referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.

36. Thus, the Chamber 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 Cyprus.

37. In this respect, the Chamber recalled the wording of art. 13 of the Contract, according to which the parties agreed that "*any employment dispute between the club and the player shall fall under the exclusive jurisdiction of the National Dispute Resolution Chamber of the CFA and shall be resolved according to the applicable regulations of the CFA*."

38. Having analysed the wording of said provision, the Chamber firstly held that it is sufficiently clear and exclusive in favour of the competence of the Cypriot NDRC.

39. Having established the foregoing, the Chamber turned its attention to the further pre-requisites for establishing the competence of a NDRC. The Chamber namely referred to principle of equal representation of players and clubs and underlined that this principle is one of the very fundamental elements to be fulfilled, in order for a national dispute resolution chamber to be recognised as such. Indeed, this prerequisite is mentioned in the Regulations on the Status and Transfer of Players, in the FIFA Circular no. 1010 as well as in art. 3 par. 1 of the NDRC Regulations, which illustrates the aforementioned principle as follows: "The NDRC shall be composed of the following members, who shall serve a four-year renewable mandate: a) a chairman and a deputy chairman chosen by consensus by the player and club representatives (…); b) between three and ten player representatives who are elected or appointed either on proposal of the players' associations affiliated to FIFPro, or, where no such associations exist, on the basis of a selection process agreed by FIFA and FIFPro; c) between three and ten club representatives (…)." In this respect, the FIFA Circular no. 1010 states the following: "*The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal (…). Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list*".

40. In respect of the above, the Chamber went on to examine the documentation on file as well as the parties' submissions, and was able to establish that the Respondent failed to provide a detailed and sufficiently clear analysis of the NDRC's compliance with the principles enumerated in Circular 1010, on the basis of which it was impossible to ascertain whether or not said body indeed complied with the relevant requirements.

41. Moreover, and more significantly, the Claimant had corroborated that the NDRC failed to meet the principle of "equal representation", to the extent that the involvement of players' representatives was not adequately respected, a line of argument which the Respondent was unable to rebut with its own submissions.

42. Therefore, the Chamber was of the opinion that the burden of proving the NDRC's compliance with the necessary principle of equal representation of players and clubs was not met by the Respondent.

43. Consequently, it rejected the objection to the competence of FIFA to deal with the present dispute, and concluded that the Football Tribunal is competent to consider the matter as to the substance, according to art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players.

44. 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 (March 2023 edition), and considering that the present claim was lodged on 03 April 2023, the March 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

45. 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

46. 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

47. 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 contractual termination by the Respondent.

48. In this context, the Chamber acknowledged that its task was to determine whether, by consequence of his conduct, the Claimant had given rise to a just cause for the Respondent to terminate the Contract prematurely, and consequently, whether or not the latter is to be held liable for compensation for a potential breach.

49. The Chamber firstly wished to recall the parties' submissions, starting with the Claimant, who argued that the Respondent terminated the Contract without just cause, with the

latter alleging erroneously that he had engaged in gross misconduct, and using this as an excuse to simply get rid of him and instead hire another foreign player.

50. Conversely, the Chamber noted that the Respondent argued that it had just cause to terminate the Contract, as the Claimant had misbehaved on several occasions, being sanctioned disciplinarily and "warned" by upper management.

51. Prior to evaluating these arguments and evidence on file, the Chamber recalled the wording of art. 13 par. 5 of the Procedural Rules, in accordance with which a party that wishes to rely on a certain fact bears the burden of proving its veracity.

52. Equally, the Chamber referred to its longstanding jurisprudence, in accordance with which a premature termination of an employment contract, in cases not concerning overdue payables, must be an *ultima ratio* measure. That is, where more lenient measures than terminating the contract are available to the parties to remedy their relationship, such measures must be readily used. Only breaches of contract of a certain severity or consistency permit the early termination of a contract.

53. Having set out the above, the Chamber deemed it noteworthy that the Respondent relied on four separate alleged incidents committed by the Claimant – the red card dated 6 November 2021 in an official match and the outburst in the club changing rooms in April 2022 – both of which were either documented or undisputed by the Claimant as having occurred, as well as two further instances of "sporting indiscipline" which allegedly took place in October 2021. The Chamber wished to emphasise that no evidence of such incidents having taken place was adduced by the Respondent, nor that the latter would have warned the Claimant in writing, at the relevant time, about any such wrongdoing.

54. In light of the above, the Chamber deemed that the lawfulness of the contractual termination had to be determined based on solely the red card dated 6 November 2021 and the changing room incident later on in April.

55. These two incidents, though addressed by the Respondent in writing or via an internal hearing mechanism, were considered insufficient by the Chamber to constitute an *ultima ratio* measure. The Chamber stressed that, not only were the concerned incidents too isolated to constitute a "substantial and consistent breach of contract", but equally was the Claimant not informed adequately of the purported gravity of the situation, and not granted a proper chance to remedy his behaviour.

56. Therefore, the Chamber concluded that the contractual termination by the Respondent was not an *ultima ratio* measure. The Contract was, therefore, held to have been terminated without just cause, rendering the Respondent liable to bear the financial consequences of such unlawful breach towards the Claimant.

ii. Consequences

57. 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.

58. The Chamber observed that the Respondent had no outstanding financial obligations towards the Claimant at the time of the contractual termination, and proceeded to calculate the compensation due to the latter.

59. 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.

60. 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.

61. 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.

62. 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, as well as the Agreement, from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of EUR 76,400 net (i.e. the residual value of both the Contract – EUR 5,400 net – and the Agreement – EUR 71,000 net) serves as the basis for the determination of the amount of compensation for breach of contract.

63. 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. As the Claimant had remained unemployed following the termination of the Contract, he was held not to have mitigated his damages.

64. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of EUR 76,400 net to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

65. Furthermore, 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 28 May 2022 until the date of effective payment.

66. Lastly, the Chamber took note of the Claimant's request for reimbursement of the alleged flight ticket costs in the amount of EUR 500. In this respect, the Chamber observed that the Claimant provided no evidence of having incurred such cost. Thus, the Chamber held that the Claimant would be entitled to receive the amount of such flight tickets as calculated by FIFA Travel.

67. Indeed, according to the assessment of FIFA Travel, the average cost of a flight between Cyprus and Spain amounted to around EUR 750. However, as the Claimant had limited his request for relief to a total amount of EUR 76,500 net already, the maximum amount payable to the Claimant in the concept of plane ticket costs was considered by the Chamber to be EUR 100, in accordance with the principle of *ne eat iudex ultra petita partium*.

68. Thus, the Chamber also decided to award EUR 100 to the Claimant for the cost of his return flight after the termination of the Contract.

iii. Compliance with monetary decisions

69. 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.

70. 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.

71. 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.

72. 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.

73. 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

74. 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.

75. 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.

76. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

FIFA FOOTBALL TRIBUNAL

IV. Decision of the Dispute Resolution Chamber

1. The Football Tribunal has jurisdiction to hear the claim of the Claimant, Roman Golobart Benet.

2. The claim of the Claimant is partially accepted.

3. The Respondent, NEA Salamina Famagusta, must pay to the Claimant the following amount(s):

   - EUR 100 as reimbursement for flight ticket costs.

   - EUR 76,400 net as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 28 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.

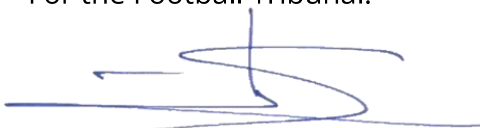
6. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:

   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

FIFA FOOTBALL TRIBUNAL

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).

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