

# Decision of the Dispute Resolution Chamber

passed on 20 July 2023

regarding an employment-related dispute concerning  
the player Abdoulaye Cissé

**BY:**

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

**CLAIMANT:**

**Abdoulaye Cissé, Guinea**  
Represented by Mr Selçuk Demir

**RESPONDENT:**

**Tuzlaspor AS, Türkiye**  
Represented by Ruiz-Huerta Crespo Abogados

## I. Facts of the case

1. On 5 August 2022, the Guinean player, Abdoulaye Cissé (hereinafter: *the Player*), and the Turkish club, Tuzlaspor AS (hereinafter: *the Club*) signed an employment contract valid as from 5 August 2022 until 30 May 2023.
2. In accordance with the employment contract, the Club undertook to pay to the Player *inter alia* the following remuneration:
  - EUR 35,000 net down payment upon signature;
  - EUR 75,000 net in 10 equal instalments between 15 September 2022 and 15 June 2023 at the rate of EUR 7,500 net each month, on the 15<sup>th</sup> day of each respective month;

### *Bonuses*

- EUR 10,000 for participating in 25 league games;
  - EUR 30,000 for winning the championship;
  - A suitable apartment and car.
3. Furthermore, in accordance with art. 3 of the Contract, the parties agreed as follows:

*"the club will have the option to extend the contract for one more season with a expiry date of 31 May 2024, with the be determined financial conditions for the 2023/2024 season by sending a notification to the player and the Turkish Football Federation between the dates of 1 May 2023 and 31 May 2023. If the club does not use its extension option, the Contract will be expired on 31 May 2023.*

*For 2023/2024 football season:*

*If the club competes in the super league, the player's net salary will be increased by 20%.*

*(...)*

*If the club competes in TFF 1. League, the player's net salary will be increased by 15%."*

4. On 22 December 2022, the Player suffered an injury, for which he was allegedly authorised to travel to France in order to receive treatment.
5. On 20 February 2023, the Club allegedly sent a warning to the Player, stating that he had been absent from training for several days on end, and requested him to return "within 7 days", failing which more severe steps, including the termination of the Contract, would be taken.
6. On 28 February 2023, the Club unilaterally terminated the Contract.

## II. Proceedings before FIFA

7. On 4 April 2023, the Player filed the claim at hand before FIFA.
8. On 9 June 2023, the Club filed a counterclaim against the player.
9. A brief summary of the position of the parties is detailed in continuation.

### a. Position of the Player

10. According to the Player, the Club had terminated the Contract without just cause, while the Player was injured. Said termination, according to the Player, came suddenly and without prior notice.
11. Furthermore, the Player outlined that he had allegedly been authorised by the Club, through his agent, who submitted a witness statement, to undergo medical treatment in France to be able to recover from an injury suffered on 22 December 2022.
12. The Player equally argued that the Club ceased to pay his salaries following the injury, being in debt of the amount of EUR 15,000 at the date of the termination of the Contract.
13. The requests for relief of the Player were, thus, the following:
  - EUR 171,500 (not specified as net) as outstanding remuneration (sic), corresponding to the amount due between January 2023 and June 2024 (assuming that the Contract would be automatically renewed);
  - EUR 66,000 (not specified as net) as compensation;
  - 5% annual interest as from 30 days after the decision of the Football Tribunal.

### b. Counterclaim of the Club

14. In its counterclaim, the club alleged that the player had been absent following his injury of 22 December 2022 without authorisation, and that, despite a considerable amount of time passing from said incident, he had not shown up to training.
15. The club alleged that it had warned the player about being absent from training and granted a 7-day deadline to return, following which more serious steps (including the termination of the Contract) would apply.
16. The club also outlined that the witness statement by the player's agent is insufficient to demonstrate that the player was authorised to go to France for treatment. Equally, the club

submitted two witness statements of its own, by its manager and accountant, who stated that the club had not authorised the Player to leave, and that it had, on the contrary, alleged that it provided him with medical tests and “maximum assistance” to begin with his rehabilitation.

17. Thus, the club argued that the player was absent without authorisation and therefore not entitled to receive the remuneration for January 2023 and February 2023.
18. The club also pointed out that the unilateral extension clause relied upon by the player is speculative, and cannot be used to calculate the compensation due to him, should the Tribunal find that the club was in breach towards the player, rather than vice versa.
19. In conclusion, the club requested compensation of EUR 22,500, interest, and a 4-month match ban against the player.

**c. Player’s reply to counterclaim**

20. Despite having been invited to do so, the player failed to reply to the counterclaim.

### 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 4 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.
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 (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 Guinea and a club from Türkiye.
23. 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 04 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

24. 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

25. 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

26. 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 Club.
27. In this respect, the Chamber acknowledged that it its task was to determine whether, based on the evidence on file, the Club had a just cause to terminate the Contract prematurely, and by consequence, whether the latter may be held liable to pay the Player any compensation.
28. Having set out the above, the Chamber began its deliberations by recalling the parties' submissions, beginning with the Player, who had argued that the Club terminated the Contract without just cause, leaving him unemployed during a period of injury, and failing to pay two monthly salaries leading up to the termination. The Chamber further noted that the Player alleged that the Club had provided no explanation or prior notice, and that he was authorised to obtain medical rehabilitation in France.
29. On the other hand, the Chamber observed that the Club contested the allegation that the Player was authorised to leave, and equally that it warned the latter about having missed training, with "more serious steps including contractual termination" following thereafter. Notwithstanding such warning, the Club asserted, the Player refused to return. The non-payment of the salaries was not contested; indeed, the Club believed that it was entitled to retain the salaries as a result of the Player's absence.
30. Before entering the analysis of the parties' submissions, the Chamber referred to the principle of burden of proof, in accordance with which a party that wishes to rely on a certain fact in its argumentation bears the burden of proving its veracity.
31. Having stated the above, the Chamber deemed it important to firstly point to the fact that the witness statements submitted by the parties were of limited probative value in the current investigation. More specifically, the player's agent, as well as the club's employees, are all directly providing services or employed by the party they are submitting the corresponding statements for. The Chamber considered such relationship to constitute a conflict of interests, and consequently decided not to take the aforementioned witness statements into account as evidence.
32. Moving on, the Chamber deemed it of particular significance that the Club, although alleging that it had warned the Player of his absence from training provided no proof of remittance of such notice towards the latter. In any event, however, the Chamber was of the opinion that such course of action displayed by the Club was too hasty in resulting in a premature contractual termination. It was recalled, importantly, that the Player had been absent (with the Club's knowledge) due to an injury, for a period of two months, during

which the latter had shown no urgency or interest in ascertaining the Player's whereabouts and potential return.

33. The Chamber wished to specifically reiterate that, pursuant to its jurisprudence, only a contractual breach of a sufficient severity or frequency warrants the premature termination of an employment contract – that is, the termination of the contract must constitute an *ultima ratio* measure.
34. Taking into account all of the above, particularly the lack of communication from the Club's side, and the failure to demonstrate that it had given the Player a chance to remedy his allegedly breachful behaviour, the Chamber concluded that the Club's termination of the Contract was not an *ultima ratio* measure.
35. Therefore, the Chamber concluded that the Contract was terminated without just cause, and that the Club bears the financial consequences thereof.

## ii. Consequences

36. 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 Club.
37. 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 two salaries under the Contract, amounting to EUR 15,000.
38. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Club is liable to pay to the Player the amounts which were outstanding under the contract at the moment of the termination, i.e. EUR 15,000 (i.e. two times EUR 7,500).
39. In addition, 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 at the rate of 5% *p.a.* on the outstanding amounts as from 23 August 2023 until the date of effective payment.
40. 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.

41. 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.
42. 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.
43. 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 30,000 (i.e. the residual value of the Contract, or four times EUR 7,500 between March 2023 and June 2023) serves as the basis for the determination of the amount of compensation for breach of contract.
44. In this respect, the Chamber wished to emphasise that the term of the Contract was clearly limited to June 2023, and that the option to extend its term was unilateral and in the hands of the Club. In the absence of such option being triggered, the Chamber could not take into consideration any financial benefits potentially owed to the player in the extended term of the Contract.
45. 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 player failed to find new employment after the contractual termination, during the residual term of the Contract, he failed to mitigate his damages.
46. 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 30,000 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.



47. 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 23 August 2023 until the date of effective payment.

### iii. Compliance with monetary decisions

48. 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.
49. 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.
50. Therefore, bearing in mind the above, the DRC decided that the Club must pay the full amount due (including all applicable interest) to the Player within 45 days of notification of the decision, failing which, at the request of the Player, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Club in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
51. The Club shall make full payment (including all applicable interest) to the bank account provided by the Player in the Bank Account Registration Form, which is attached to the present decision.
52. 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

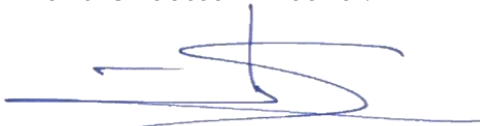
53. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.

54. 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.
55. 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, Abdoulaye Cissé, is partially accepted.
2. The Respondent / Counterclaimant, Tuzlaspor AS, must pay to the Claimant / Counter-Respondent the following amount(s):
  - **EUR 15,000 as outstanding remuneration** plus 5% interest *p.a.* as from 23 August 2023 until the date of effective payment;
  - **EUR 30,000 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 23 August 2023 until the date of effective payment.
3. Any further claims of the Claimant / Counter-Respondent are rejected.
4. The counterclaim of the Respondent / Counterclaimant is 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 / Counter-Respondent** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
8. This decision is rendered without costs.

For the Football Tribunal:



**Emilio García Silvero**

Chief Legal & Compliance Officer

**NOTE RELATED TO THE APPEAL PROCEDURE:**

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

**NOTE RELATED TO THE PUBLICATION:**

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules Governing the Football Tribunal).

**CONTACT INFORMATION**

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