

Decision of the Dispute Resolution Chamber

passed on 28 July 2023

regarding an employment-related dispute concerning
the player Pa Amat Dibba

BY:

Angela Collins (Australia), Single Judge

CLAIMANT:

Pa Amat Dibba, Gambia

Represented by Nihat Güman

RESPONDENT:

Club Eyüpspor, Türkiye

Represented by Ercan Sevdimbaş

I. Facts of the case

1. On 26 August 2021, the Gambian player Pa Amat Dibba (hereinafter: *the Claimant*) and the Turkish club Eyüpspor (hereinafter: *the Respondent*) concluded an employment agreement (hereinafter: *the contract*) valid as from the same date until 31 May 2023.
2. Pursuant to the contract, the club undertook to pay the player a monthly salary of EUR 50,000 by the end of each month.
3. On 18 May 2023, the Claimant put the Respondent in default of EUR 150,000 as outstanding remuneration and granted the latter a term of 15 days to remedy the alleged breach.
4. Following the default notice, the Respondent paid the Claimant a total of EUR 86,054.
5. On 8 June 2023 the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.
6. According to the Claimant, the Respondent failed to comply with its financial obligations regarding the monthly salaries of March, April, and May 2023.
7. In this respect, the player acknowledged having received a total of EUR 86,054 after the default notice dated 18 May 2023, whereas on 31 May 2023 also the salary of May became due.
8. Accordingly, the amounts requested as relief by the player were:
 - EUR 13,946 as outstanding remuneration for March 2023;
 - EUR 50,000 as outstanding remuneration for April 2023;
 - EUR 50,000 as outstanding remuneration for May 2023;
 - 5% interest per annum as from the respective due dates.
9. In its reply, the Respondent objected to the claim presented by the Claimant, arguing having already made several payments to the latter. In this context, the Respondent produced several receipts of payments, which date up to 12 December 2022.
10. The request for relief of the Respondent was to set-off those amounts from the receivables of the Claimant.

II. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

11. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *the Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 8 June 2023 and submitted for decision on 28 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.
12. 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 (May 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 Gambia and a club from Türkiye.
13. In continuation, 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 (May 2023 edition), and considering that the present claim was lodged on 08 June 2023, the aforementioned edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

14. 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 she 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

15. The 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 she will refer only to the facts, arguments, and documentary evidence, which she considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

16. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that while the Claimant seeks unpaid wages for April, May, and June 2023, the Respondent argued having already made the due payments in favour of the Claimant.
17. 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 latter had a valid justification for not having complied with its financial obligations.
18. As such, the Single Judge observed that the Respondent submitted several payment slips related to the Claimant's previous salaries but failed to produce evidence that the salaries connected with the month of April 2023, May 2023 and June 2023 have been paid. In other words, the evidence filed by the Respondent, while pertaining to several payments made, had no connection with the amounts sought by the Claimant.
19. The Single Judge first noted that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. Nonetheless, absent such evidence and any reasonable justification by the Respondent for not having complied with the terms of the contract, the Single Judge decided that its position could not be upheld.
20. Accordingly, the Single Judge concluded that the amounts of EUR 13,946 due as salary for April 2023, EUR 50,000 due for the salary of May 2023 and EUR 50,000 due for the salary of June 2023, remain outstanding to date.
21. 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 remained outstanding, i.e., EUR 113,946.
22. In addition, taking into consideration the Claimant's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from the respective due dates until the date of effective payment.

ii. Compliance with monetary decisions

23. 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.

24. 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.
25. 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.
26. 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.
27. 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.

d. Costs

28. 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.
29. 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.
30. Lastly, the Single Judge concluded the deliberations by rejecting any other requests for relief made by any of the parties.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Pa Amat Dibba, is accepted.
2. The Respondent, Eyüpspor, must pay to the Claimant the following amount(s):
 - **EUR 113,946 net as outstanding remuneration** plus interest p.a. as follows:
 - 5% interest p.a. over the amount of EUR 13,946 as from 1 April 2023 until the date of effective payment;
 - 5% interest p.a. over the amount of EUR 50,000 as from 1 May 2023 until the date of effective payment;
 - 5% interest p.a. over the amount of EUR 50,000 as from 1 June 2023 until the date of effective payment.
3. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
4. 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.
5. 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.
6. 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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