

Decision of the Dispute Resolution Chamber

passed on 6 July 2023

regarding an employment-related dispute concerning
the player Damjan Dokovic

BY:

Dana Al Noaimi (Qatar)

Single Judge of the Dispute Resolution Chamber

CLAIMANT:

Damjan Dokovic, the Netherlands

RESPONDENT:

Adana Demirspor, Türkiye

Represented by Mr Umur Varat and Ms Aygin Kuruloğlu

I. Facts of the case

1. On 8 February 2022, the Dutch player Damjan Dokovic (hereinafter: *Claimant* or *player*) and the Turkish club Adana Demirspor (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *the Contract*) valid as from the date of signature until 31 May 2022.
2. According to the contract, the Respondent undertook to pay the Claimant a total remuneration of EUR 300,000, payable in four monthly salaries of EUR 75,000 between March 2022 and June 2022.
3. Furthermore, the Contract stipulated that the Respondent shall pay the Claimant an annual / seasonal sum of EUR 4,000 for accommodation, car and flight tickets, in monthly instalments of EUR 1,000 each, by no later than the 30th day of each month between March 2022 and June 2022.
4. Lastly, the Contract stipulated that all amounts payable via the Contract are “net amounts” with all taxes payable by the Respondent.
5. On 7 July 2022, the Claimant put the Respondent in default and requested payment of EUR 225,000 net, granting a time-limit of 10 days to remedy the alleged non-payment.
6. On 20 July 2022, the Claimant sent a further default notice to the Respondent, requesting the same amount and granting a time-limit of 10 days once again.
7. On 27 July 2022, the Respondent paid EUR 100,000 to the Claimant.
8. On 8 September 2022, the Claimant sent a further default notice to the Respondent, requesting further payment of EUR 128,000, corresponding to the remaining outstanding amount of EUR 125,000 following the payment of EUR 100,000 made in July 2022, as well as EUR 3,000 corresponding to the additional allowance for accommodation between April 2022, May 2022 and June 2022.
9. On 12 September 2022, the Respondent paid the amount of EUR 75,000 to the Claimant.
10. On 14 September 2022, the Respondent paid the amount of EUR 50,000 to the Claimant.
11. On 11 October 2022, the Claimant sent a further default notice for the amount of EUR 3,000, granting a deadline expiring after 10 days to remedy the alleged non-payment.

II. Proceedings before FIFA

1. On 3 February 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

2. According to the Claimant, the Respondent failed to comply with the financial terms of the Contract by not paying three accommodation allowance instalments (April 2022, May 2022 and June 2022), in the total amount of EUR 3,000 net.
3. Furthermore, the Claimant outlined that the salary instalments of EUR 75,000 net were paid with significant delay, thus giving rise to the obligation to pay interest thereon.
4. Therefore, the Claimant requested EUR 3,000 net as an outstanding amount, interest on said amount as from the respective due dates of the unpaid EUR 1,000 net instalments, and interest on the amounts of EUR 75,000 net as from the due dates of said instalments until their respective dates of payment.

b. Position of the Respondent

5. In its reply, the Respondent outlined that the late payment of the amounts was due to the alleged force majeure effect of COVID-19, and the resulting fluctuation in exchange rates from the local currency.
6. The Respondent also argued that, due to the fluctuation in exchange rates, the interest rate stipulated by Turkish law of 0.01% *p.a.* should apply.
7. In light of the above, the Respondent requested for the claim to be rejected.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

8. 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, she took note that the present matter was presented to FIFA on 3 February 2023 and submitted for decision on 6 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.
9. 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), she is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from the Netherlands and a club from Türkiye.
10. Subsequently, the Single Judge 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 (May 2023 edition), and considering that the present claim was lodged on 3 February 2023, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. 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).

c. 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 she 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, whilst concurring on the amounts claimed by the player having remained unpaid, disagree on the validity of the Respondent's justification for said non-payment.
14. In this context, the Single Judge acknowledged that it its task was to determine, based on the argumentation and evidence on file, whether the Respondent had a valid justification for not having complied with its financial obligations under the Contract.
15. In this respect, the Single Judge took note of the Respondent's argumentation that the non-payment of the accommodation allowance owed to the Claimant, as well as the delay in remitting the salary instalments of EUR 75,000, were due to the financial difficulties caused by the poor economic situation in Türkiye, and, in particular, the depreciation of the local currency, i.e. the Turkish Lira.
16. In this context, the Single Judge wished to point out that the Respondent failed to submit adequate evidence corroborating the assertion that, on the basis of the depreciation of the Turkish Lira, the club was unable to, or even attempted to meet its obligation under the Contract, thereby failing to meet the burden of proving that the payments could be challenged.
17. Consequently, the Single Judge concluded that, as no situation of force majeure could be established in the present matter, the Respondent has to comply with the contractually agreed payments as stipulated per the Contract.
18. Therefore, the Single Judge firstly decided that the amounts of EUR 3,000 net, as contractually stipulated, were to be awarded to the Claimant in accordance with the principle of *pacta sunt servanda*.
19. Furthermore, in line with the Claimant's request and the standard practice of the Single Judge in this respect, the latter decided to award interest on the above amounts as from the following dates:
 - On the amount of EUR 1,000 net, 5% *p.a.* as from 30 April 2022 until the date of effective payment;
 - On the amount of EUR 1,000 net, 5% *p.a.* as from 30 May 2022 until the date of effective payment;
 - On the amount of EUR 1,000 net, 5% *p.a.* as from 30 June 2022 until the date of effective payment.

20. The Single Judge herewith wished to emphasise that, in accordance with the standard practice of the Football Tribunal, as well the general rule in Swiss law, the rate of 5% *p.a.* shall be applicable in determining the interest payable to the Claimant based on the late remittance of the concerned amounts.
21. Subsequently, the Single Judge turned to the request for interest on the late payments made in respect of the salary instalments owed to the Claimant, in the amount of EUR 75,000 net each.
22. In this respect, the Single Judge noted that the following amounts had been due to the Claimant, at certain dates as stipulated in the Contract:
 - EUR 75,000 net, payable by no later than 30 April 2022;
 - EUR 75,000 net, payable by no later than 30 May 2022;
 - EUR 75,000 net, payable by no later than 30 June 2022.
23. Furthermore, the Single Judge noted that the above amounts had been paid as follows by the Respondent:
 - EUR 100,000 net, on 27 July 2022;
 - EUR 75,000 net, on 12 September 2022;
 - EUR 50,000 net; on 14 September 2022.
24. Taking this into account, the Single Judge calculated the delay on each individual instalment of EUR 75,000 net to be 89 days (April 2022 instalment), 106 days (May 2022 instalment) and 77 days (June 2022 instalment) respectively.
25. Consequently, the Single Judge calculated said total interest to be EUR 904.10 net (EUR 75,000 net x (89/365) x 0.05) *plus* EUR 1078.75 (EUR 75,000 net x (106/365) x 0.05) *plus* EUR 780,80 (EUR 75,000 net x (77/365) x 0.05) = EUR 2,763.65 net.
26. Therefore, the Single Judge decided that, in addition to the amount of EUR 3,000 net and corresponding interest, the Respondent shall be held liable to pay the amount of EUR 2,763 net to the Claimant.
27. Lastly, and in accordance with the general legal principle of *ne bis in idem*, the Single Judge awarded no additional interest on said amount.

ii. Compliance with monetary decisions

28. 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 her 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.

29. 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.
30. 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.
31. 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.
32. 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.

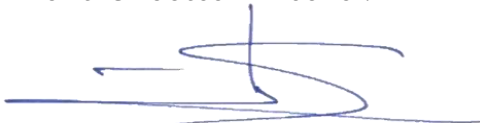
d. Costs

33. 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.
34. 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.
35. Lastly, the Single Judge concluded her 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, Damjan Dokovic, is accepted.
2. The Respondent, Adana Demirspor, must pay to the Claimant the following amount(s):
 - **EUR 2,763 net as outstanding amount;**
 - **EUR 3,000 net as outstanding remuneration** plus interest *p.a.* as follows:
 - 5% interest *p.a.* over the amount of EUR 1,000 net as from 30 April 2022 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 1,000 net as from 30 May 2022 until the date of effective payment;
 - 5% interest *p.a.* over the amount of EUR 1,000 net as from 30 June 2022 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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