

Decision of the Dispute Resolution Chamber

passed on 20 July 2023

regarding an employment-related dispute concerning the player Avounou Durel Ben Daniel

COMPOSITION:

Clifford J. HENDEL (USA & France), Deputy Chairperson

Mario FLORES CHEMOR (Mexico), Member

Alexandra GOMEZ BRUINEWOUD (Uruguay & The Netherlands), Member

CLAIMANT / COUNTER-RESPONDENT:

Avounou Durel Ben Daniel, Congo DR

Represented by Deniz Torun

RESPONDENT / COUNTERCLAIMANT:

Bereket Sigorta Umraniyespor, Türkiye

Represented by Ercan Sevdimbaş

I. Facts of the case

1. On 1 July 2022, the Congolese player Avounou Durel Ben Daniel (hereinafter: *the player* or *the Claimant*) and the Turkish club, Bereket Sigorta Umraniyespor (hereinafter: *the club* or *the Respondent*) concluded an employment contract valid as from the date of signature until 31 May 2023 with an optional extension for the 2023/2024 season (hereinafter: *the Contract*).
2. According to clause 3 of the Contract, the club undertook to pay the player *inter alia* the following amounts:
 - EUR 25,000 net as guaranteed fee on 30 September 2022;
 - EUR 150,000 net payable in 10 instalments of EUR 15,000 each, between August 2022 and May 2023; and
 - EUR 15,000 net as bonus "*if the player plays in the first 11 squad in 20 official league matches*".
3. In addition, the special provisions of clause 3 of the Contract also read as follows: "*If the EURO rates is higher than the rate of the signing date, the payments will be made in Turkish Lira considering the currency rate of the signing date*".
4. On 5 April 2023, the player put the club in default for overdue payables. Contextually, the player argued that he should have already received EUR 160,000 out of which only EUR 80,975 had been timely paid by the club. Therefore, he requested payment of the balance of EUR 79,025 within 15 days under penalty of termination.
5. On 25 April 2023, the player notified the club of the termination of the Contract due to overdue payables. He mentioned, in such opportunity, that the club had failed to remedy its breach "*in full*".
6. The player informed that he remained unemployed following the termination of the Contract with the club.

II. Proceedings before FIFA

7. On 9 May 2023, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Claim of the player

8. In his claim, the player argued that the club failed to comply with its financial duties, giving cause to the premature termination of the Contract in line with art. 14bis of the FIFA Regulations on the Status and Transfer of Players (RSTP).
9. Consequently, the player requested to be awarded the balance between the entire remuneration that should have been by the club under the Contract (*i.e.*, EUR 175,000 corresponding to guaranteed fees *plus* EUR 15,000 as bonus for participation in matches) *minus* the amount effectively paid (*i.e.*, EUR 128,545), totalling EUR 61,455.
10. The player did not file a request for interest.

b. Reply and counterclaim of the club

11. On 12 June 2023, the club filed its reply to the claim of the player and lodged a counterclaim against him.
12. In its claim, the club initially referred to the special provisions included in the Contract for the payment of the player's remuneration and clarified that the exchange rate for Turkish Lira (TRY) – Euros (EUR) was always higher than in the date of signature, hence that the later should be used for the calculation of the outstanding remuneration.
13. Subsequently, the club argued that it paid the player the total of TRY 2,588,546.60, with the applicable conversion from EUR to TRY and then back to EUR again.
14. Therefore, the club stressed not only that it fulfilled its duties, but also that it overpaid the player for an amount of TRY 46,696.60.
15. In light of the above, the club alleged that the Contract was terminated without just cause, hence the player should be the one liable to pay compensation for breach of contract amounting to TRY 3,114,446 *plus* EUR 2,500,000, broken down as follows:
 - TRY 2,588,546.60 as fees and expenses already paid by the club to the player during the Contract; *plus*
 - TRY 525,900 as the residual value of the Contract; *plus*
 - EUR 2,500,000 as the amount that should have been paid to the club in case the player did not want to extend the Contract for the subsequent season of 2023/2024 and considering that it was already known that the club would be relegated (*cf.* clause 3 of the Contract).
16. Furthermore, the club also requested sporting sanctions to be imposed on the player due to unlawful breach of contract.

c. Reply to the counterclaim of the player

17. On 19 June 2023, the player filed his reply to the counterclaim of the club.
18. Firstly, the player explained that the special provision regarding the exchange rates to be used by the parties (*i.e.*, clause 3 of the Contract) was not applicable to this matter insofar as all the amounts delivered by the club were already paid in EUR. Furthermore, the player alleged that *“it is contrary to the ordinary course of life that [the club], which has been late and incomplete fulfilling its financial obligations throughout the contract period, and also has lawsuits with many other players for this reason, pays more than it should have paid during the payment of the first two instalments”*.
19. Secondly, the player insisted that he received a total of EUR 128,545 from the club, arriving at a debt of EUR 61,455 – including the outstanding salaries, the bonus and compensation.
20. Alternatively, the player also claimed that – even if considered that the monies due to the player should be converted to TRY and then back to EUR with the exchange rate from the due date of each payment – the club would still have failed to comply with its financial obligations in full, as follows:
 - Amount to be paid until the date of termination: EUR 132,584
 - Amount effectively paid: EUR 128,545
 - Debt: EUR 4,039
21. Therefore, the player reiterated that the Contract was terminated with just cause. He furthermore echoed his request to be awarded EUR 61,455.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

22. 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 9 May 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.
23. 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 par. 1 lit. b) of the FIFA RSTP (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 Congolese player and a Turkish club.

24. 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 FIFA RSTP (May 2023 edition), and considering that the present claim was lodged on 9 May 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

25. 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

26. 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

27. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that it pertains to a claim of a player against a club for breach of contract, and a corresponding counterclaim opposing the same parties.

28. In particular, the Chamber noted that the player terminated the Contract on 25 April 2023 due to overdue payables. The parties, however, dispute the justice of such termination *vis-à-vis* the *quantum* effectively outstanding and the contents of art. 14bis of the Regulations.

29. In this context, the DRC observed that at the time the default notice was sent by the player (*i.e.*, 5 April 2023), he should already have received the following amounts per the Contract:

- EUR 25,000 net as sign-on fee;
- EUR 120,000 net as the salaries from August 2022 until March 2023 (*i.e.*, 8 months *times* EUR 15,000 each);
- **Total: EUR 145,000 net.**

30. In continuation, the Chamber acknowledged that the club provided proof of having made the following payments to the player **in EUR**, which were also not specifically disputed:
- EUR 15,000 on 1 September 2022;
 - EUR 15,000 on 10 November 2022;
 - EUR 27,775 on 8 December 2022;
 - EUR 10,000 on 7 March 2023;
 - EUR 3,200 on 13 March 2023;
 - EUR 10,000 on 4 April 2023;
 - **Total: EUR 80,975 net.**
31. Therefore, at the time the player put the club in default, it owed him EUR 64,025 net, which should have been fully cured within the following 15 days.
32. Notwithstanding the above, the Chamber took due consideration that within the granted deadline the club proved having paid additional EUR 47,570 on 19 April 2023, therefore leaving a debt of EUR 16,455.
33. In parallel, the Chamber outlined that, as the player's remuneration in the Contract was already stipulated in EUR, the outstanding amounts were calculated per the original arrangement in EUR only. As opposed to the argumentation of the club, the conversion rate would only be relevant in case the payments had been performed by the club in national currency (TRY), which was not the case. Therefore, the Chamber determined that the club's position regarding the variation of the currency rates should be disregarded.
34. In conclusion and in strict observation of art. 14bis of the Regulations, the DRC decided that the player terminated the Contract with just cause. As such, the club shall be liable to the consequences that follow.

ii. Consequences

35. 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.
36. In accordance with the general legal principle of *pacta sunt servanda*, the Chamber initially 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: EUR 31,455 net as outstanding salaries (*i.e.*, the existing debt of 16,455 *plus* the full salary of April 2023).
37. In addition, the DRC acknowledged that the player also requested to be awarded EUR 15,000 net as participation / appearance bonus. Accordingly, the Chamber noted that his request was contractually based, supported by documentary evidence, and was not specifically challenged by the club despite having the opportunity to do so. Therefore, the Chamber decided that he should also be entitled to the amount sought

38. At this point, the Chamber highlighted that the player would also be entitled to default interest over the outstanding amounts. Nevertheless, as he filed no request for interests, the DRC was prevented from making any ruling in this respect (*ne ultra petita*).
39. 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.
40. 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.
41. 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.
42. 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 15,000 net (*i.e.*, the salary of May 2023) serves as the basis for the determination of the amount of compensation for breach of contract.
43. 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.

44. Indeed, the player did not find new employment, therefore no mitigation applies. In addition, the Chamber also highlighted that no additional compensation should be awarded in line with art. 17 par. 1 lit. ii) of the Regulations.
45. 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 15,000 net to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
46. Once again, no interest was granted by the Chamber as it was not requested by the player (*ne ultra petita*).
47. Lastly, the DRC concluded that the claim of the player was accepted, and the counterclaim of the club fully rejected.

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.

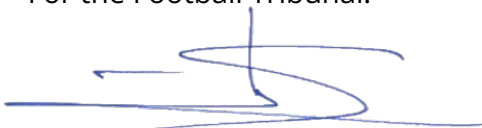
d. Costs

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, Avounou Durel Ben Daniel, is accepted.
2. The Respondent / Counterclaimant, Bereket Sigorta Umraniyespor, must pay to the Claimant / Counter-Respondent the following amount(s):
 - **EUR 46,455 net as outstanding remuneration**; and
 - **EUR 15,000 net as compensation for breach of contract without just cause.**
3. The counterclaim of the Respondent / Counterclaimant is rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** 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 / Counterclaimant 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 / Counter-Respondent** 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