

Decision of the Dispute Resolution Chamber

passed on 20 July 2023

regarding an employment-related dispute concerning
the player **Tomás Martins Podstawski**

BY:

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

Mario FLORES CHEMOR (Mexico), member

Alexandra GÓMEZ BRUINEWOOD (Uruguay & Netherlands), member

CLAIMANT:

Mr Tomás Martins Podstawski, Portugal

c/o Mr Nelson Soares

RESPONDENT:

Karmiotissa Polemidion, Cyprus

Represented by Mr Panayiotis Georgiou

I. Facts of the case

1. On 1 July 2022, the player Tomas Martins Podstawski (hereinafter: *the player* or *the Claimant*) and Karmiotissa Polemidion (hereinafter: *the club* or *the Respondent*) concluded an employment contract valid as from 1 July 2022 until 30 June 2023.
2. Accordingly, the player was entitled to the following remuneration:
 - From 1 July 2022 until 30 June 2023, EUR 14,400 net, payable in 12 instalments of EUR 1,200 each, starting on 20 August 2022 and payable on the 20th day of every successive month.
3. The contract further stipulated that *"In case of extension of the term of the Contract in accordance with clause 1. I, from 01/07/2023 until 30/06/2024, the Player will receive the total amount of · € 14.400,00 (...) net of any tax"*
4. In addition, on the same date, the parties concluded a supplementary agreement stipulating a series of *"additional benefits"*, as follows:
 - EUR 8,000 net as signing-bonus;
 - EUR 4,800 net as *"loyalty bonus"*, due each month from 20 August 2022 until 20 July 2023.
5. The supplementary agreement included the following:

"8. In the event the Player terminates with just cause this contract, or if the Club terminates this contract without just cause, the Player will be entitled to a financial compensation equivalent to the sum of ALL financial benefits agreed on his behalf in the employment contract and in this supplementary agreement.

9. The financial compensation agreed in previous clause will not be subjected to any kind of deductions, discounts or mitigation and shall be immediately and unconditionally fully demandable with the receipt of the termination notice."
6. On 8 April 2023, the parties concluded a termination agreement stipulating, *inter alia*, the following:

"3.1 The Player expressly agrees that by signing this Agreement, he has no financial and/or other claims from the club and that he shall retain no further claims against the Club."
7. On 10 April 2023, the player lodged a complaint before the Larnaca Police for *"threat"*.

II. Proceedings before FIFA

8. On 14 April 2023, the player lodged a claim before the FIFA Football Tribunal for outstanding remuneration and breach of contract without just cause, and requested the payment of the following amounts:
 - EUR 12,000 as outstanding remuneration, corresponding to his *"base salaries and monthly guaranteed loyalty bonuses"* of January to March 2023 minus EUR 6,000 that were received in cash after signing the termination agreement;
 - EUR 107,996 as compensation for breach agreement, as established in art. 8 and 9 of the supplementary agreement. The player emphasized that no mitigation is applicable.
 - EUR 649.30 corresponding to the flight tickets for the route Larnaka-Oporto.
 - EUR 36,000 as additional compensation *"due to the egregious circumstances"*.
9. The player requested 5% interest p.a. as from 8 April 2023.
10. According to the player, from January 2023 forward the Club ceased to pay him the base salary and the monthly guaranteed loyalty Bonus.
11. Following the Claimant, on 8 April 2023, while on training, the club instructed him to go to the locker room *"that was located in a container"* and the *"bodyguards immediately closed the door from outside"*.
12. The Claimant explained that the club tried to force him to sign a termination agreement without compensation.
13. The player stated that the player felt intimidated and feared for his life and physical integrity as well as by the life and physical integrity of his girlfriend, as she was allegedly referenced by a club official.
14. As a result, the player explained that he is left-handed, but that he signed the termination agreement *"with his right hand and the last page with his left hand in an attempt to demonstrate that his calligraphy was different and that he was signing that document against his will"*
15. The player explained that after signing that termination agreement, one of the club's bodyguards kept a signed copy and the other one escorted him outside and led him to another container, where some person delivered to him in hand EUR 6,000 in cash and told him to *"go away"*.
16. In relation to the contents of the termination agreement, the player underlined that there were no objective advantages for him in anticipating the termination of his employment contract.

17. The Claimant states: *"The Player felt intimidated by the aggressiveness and threats of Mr. Stavros and of the bodyguards and feared for his life and physical integrity as well as by the life and physical integrity of his girlfriend, in the event of non-signing the termination agreement. So, under duress, the Player had no other option than to sign the termination agreement, what he did against his will (in annex as «exhibit 3»)".* Therefore, the Claimant deems that the termination agreement shall be considered null and void.
18. In its reply, the Respondent rejected the player's claim as it considered it to be *"a typical paradigm of a Claimant who mala fide attempts to reap as many gains as possible from a case"*.
19. The club argued that both parties had already admitted that it would be mutually beneficial to prematurely terminate their employment relationship, and that, as a result, they mutually concluded a termination agreement.
20. The Respondent insisted that the Termination Agreement was not signed under duress by the Claimant and thus it is valid and binding. In this respect, the Respondent considered that it is unambiguously clear that the Claimant failed to submit any proof in order to support his allegations.
21. Subsidiarily, in case the DRC decides that the Termination Agreement was signed under duress and proceeds to calculate the payable compensation under Article 17 of the Regulations on the Status and Transfer of Players, the Respondent considered that the amount of payable compensation is EUR 18.000, which corresponds to the residual value of the Employment and Supplementary Agreement as to the sporting season 2022/23.
22. In his *replica*, the Claimant considered that the club had the burden of proof in relation to the claimed outstanding amounts from January, February and March 2023.
23. The player also argued that he attempted to find an amicable solution with the club but was met with intransigence.
24. The Claimant also disputed the club's version of events regarding the signing of the termination agreement, claiming it was sudden, unpredictable, and without the opportunity for proper legal advice.
25. Furthermore, the player pointed out discrepancies in the initials and handwriting on the termination agreement and insisted that the signing was against their will.
26. The player also noted that he did not find a new club.
27. In its *duplica*, the Respondent insisted on its previous arguments.

28. The club considered that the player adopted a dishonest narrative filled with gaps and contradictory statements, with the ultimate goal of portraying himself as a victim, mislead the DRC, and deceive the Chamber in order to obtain financial gain from the dispute.

29. The club argued that, when examining the key element of the dispute, namely the signing of the Termination Agreement, it becomes clear that there is a complete lack of evidence. The club emphasized that the player argues that he signed the agreement under duress. However, the club pointed-out that the player has relied solely on his own narrative and has not provided any evidence to support his position other than the narrative included in his Claim. Furthermore, the club noted that his narrative has been constantly adjusted depending on the Club's arguments.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

1. 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 14 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.
2. Subsequently, 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 (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 Portugal and a club from Cyprus.
3. 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 (May 2023 edition), and considering that the present claim was lodged on 14 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

4. 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

5. 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

6. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties initially concluded an employment contract valid as from 1 July 2022 until 30 June 2023.
7. Subsequently, the Chamber observed that the player lodged a claim before the FIFA Football Tribunal for outstanding remuneration and breach of contract without just cause, arguing that the termination agreement signed on 8 April 2023 was null and void as he had signed it under duress.
8. On the other hand, the Chamber acknowledged the club's position, according to which the termination agreement is fully valid as the player failed to submit any cogent evidence in order to demonstrate that he signed it against his will. The Chamber also verified that the club provided a signed copy of the signed termination agreement in its reply.
9. In light of the circumstances presented, the Chamber acknowledged that the primary legal issue requiring examination is the determination of the validity of the termination agreement and whether any duress was duly proven (which would invalidate the agreement).
10. Regarding the allegations of duress, the Chamber first wished to stress that a party is under duress if, in the circumstances, he has good cause to believe that there is imminent and substantial risk to his own life, limb, reputation or property or those of a person close to him.
11. With the above in mind, the Chamber noted that the player provided a relatively detailed explanation about the alleged circumstances in which the termination agreement was allegedly signed, yet it also observed that there is an absence of evidence substantiating the events claimed. In addition, the Chamber also observed that the player's submission of a complaint before the local police does not provide a description of the events that led the player to sign the termination agreement, as the document submitted appears to be generic, alleging "*threats*" without specific elaboration.
12. Against such background, the Chamber observed once again that the player's account relies primarily on his own statements and explanations, without substantial corroborating evidence or specific details. Moreover, the Chamber also emphasized that the documentation presented on the player's complaint to the local police is rather vague and does not provide a comprehensive account of the alleged threats.

13. Based on the available information, including the written statement of a former teammate of the player who signed a termination agreement at the same time and close by to where the player signed it, the Chamber is constrained to conclude that the evidence provided by the player is insufficient to prove the existence of duress, and, as such, the player's argumentation cannot be followed.
14. As a logical consequence of the above, the Chamber established that the termination agreement must be deemed as valid and binding.
15. The foregoing having been determined, the Chamber went on to examine the legal consequences of said termination agreement.
16. In particular, the Chamber noted that said agreement established that *"the Player expressly agrees that by signing this Agreement, he has no financial and/or other claims from the club"*.
17. At this point, the DRC recalled that it remains undisputed that after the termination agreement was signed, the club paid to the player the amount of EUR 6,000. Of particular relevance is the statement made by the club at paragraph 184 of its reply when it explained that by 8 April 2023, namely when the termination agreement was signed, *"the Player had effectively received any and all salaries due, corresponding to his remuneration from July 2022 to March 2023. The payment of the last monthly salary (March 2023) was made in cash after the signing of the Termination Agreement on 8 April 2023"*. In this respect, the Respondent also acknowledged that the payment of EUR 6,000 *"corresponded to the overdue payables until that date"*.
18. That is to say, the Respondent's position is that, by paying EUR 6,000 to the player, it did not have any outstanding salaries towards him when the termination agreement was signed.
19. On this note, the Chamber noted that, in his claim, the player insisted to receive EUR 12,000 as outstanding remuneration, corresponding to his *"base salaries and monthly guaranteed loyalty bonuses"* of January to March 2023 (i.e. 18,000) minus EUR 6,000 that were received in cash after signing the termination agreement.
20. With due consideration to the above, the Chamber wished to remark that the termination agreement fundamentally implied entailed the early termination of the employment contract that was concluded between the parties. However, the Chamber also understood that, as recognised by the Respondent, the termination agreement did not constitute as a waiver for outstanding salaries due until the date of the termination agreement, rather there were *no* outstanding salaries at that time as they had allegedly been fully paid. Indeed, the Chamber assumed that the termination agreement could potentially mean that the salaries due up until the termination were paid. However, despite this possible meaning, the Chamber observed that said clause was drafted without accompanying any additional evidence about said payment. As such, the term "claim" as defined in the

termination agreement needs to be interpreted under the light that the player's salaries until 8 April 2023 had supposedly already been paid.

21. In the opinion of the Chamber, although the termination agreement states that there are no overdue payables, the actions of the club went against what is stated in the agreement, by paying EUR 6.000 after the termination agreement was signed. This evidences that although the termination agreement states that there were no overdues, there actually were, as acknowledged by the club. The question is if only EUR 6.000 were due, and those were paid, or if EUR 18.000 were due, and because the club paid EUR 6.000, there are EUR 12.000 still due, as claimed by the player. If the club indeed paid the player's remuneration up until the conclusion of the termination agreement, it should have been able to easily prove such payments, particularly those months requested by the player. Yet, the Chamber observed that the club failed to provide any evidence in that regard, having had two options to do so, in the response to the claim and in the *duplica*.
22. As a result, the Chamber held that the amount of EUR 12,000 remains outstanding.
23. Therefore, in accordance with the principle of *pacta sunt servanda*, the Chamber established that the Respondent shall pay to the Claimant, the outstanding amount of EUR 12,000, as detailed above.
24. Moreover, in accordance with the jurisprudence of the Football Tribunal as well as by considering the claim of the Claimant, the Chamber decided to award 5% interest p.a. as from 8 April 2023, as requested, over said amount and until the effective payment.

ii. Compliance with monetary decisions

25. 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.
26. 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.
27. 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.

28. 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.
29. 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

30. 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.
31. 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.
32. 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, Tomás Martins Podstawski, is partially accepted.
2. The Respondent, Karmiotissa Polemidion, must pay to the Claimant the amount of **EUR 12,000 net as outstanding remuneration plus 5% interest as from 8 April 2023** until the date of effective payment.
3. Any further claims of the Claimant are 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 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** 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

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