

# Decision of the Dispute Resolution Chamber

passed on 22 June 2023

regarding an employment-related dispute concerning  
the player Patryk Tomasz Procek

## COMPOSITION:

**Omar ONGARO (Italy)**, Deputy Chairperson  
**André DOS SANTOS MEGALE (Brazil)**, member  
**Stefano SARTORI (Italy)**, member

## CLAIMANT:

**Patryk Tomasz Procek, Poland**  
Represented by Wiktor Cajsel

## RESPONDENT:

**AEL Limassol, Cyprus**

## I. Facts of the case

1. On 23 June 2020, the Polish Player, Patryk Tomasz Procek (hereinafter: *the player* or *the Claimant*) and the Cypriot club, AEL Limassol (hereinafter: *the club* or *the Respondent*) concluded an employment contract (hereinafter: *the contract*) valid as from the date of signature until 31 May 2023.
2. According to clause 1.3 of the contract, the Player would be entitled to the following amounts:
  - From 31 August 2020 until 31 May 2021: 10 monthly salaries of EUR 3,300 net.
  - From 31 August 2021 until 31 May 2022: 10 monthly salaries of EUR 3,500 net.
  - From 31 August 2022 until 31 May 2023: 10 monthly salaries of EUR 3,900 net.
3. On 10 June 2021, the player and the club concluded an image rights contract (hereinafter: *IR agreement*). In accordance with the IR agreement, it would be terminated: (i) after its expiry, (ii) by mutual consent and (iii) by termination of the contract.
4. In accordance with the IR agreement, the player would be entitled to the following amounts:
  - From 31 August 2021 until 31 May 2022: 10 monthly instalments of EUR 2,500 net.
  - From 31 August 2022 until 31 May 2023: 10 monthly instalments of EUR 7,100 net.
  - If the Club “succeeded to be the Cyprus First Division Champions after the end of the competition of the football season 2022-23”, the player would be entitled to EUR 10,000.
  - If the Club wins the Cup Trophy, the player would be entitled to EUR 5,000.
  - If the Club “succeeded to finish at the 2<sup>nd</sup> and 3<sup>rd</sup> Position or any other Europa League qualify position after the completion of the football seasons 2022-23”, the player would be entitled to EUR 5,000.
5. On 29 July 2022, the player sent a termination notice to the club stating as follows: “(...) *due to the lack of repayment of the club’s debt in reference to the content of my request from July 13, 2022 in which [the player] called [the club] to immediately pay the amount of EUR 10,000 (which is my contractual payment for the period of 3 months) under pain of termination of the contract due to the club’s fault. On the basis of art 14bis paragraph 1 [of the] Regulations on the Status and Transfer of Players (...)* [the player] hereby submit [his] statement on the unilateral termination of [his contract] (...)”. It is to be noted that the Claimant stated in its claim that the contract was terminated on 15 August 2022.
6. On 18 January 2023, the Claimant put the Respondent in default and requested payment of EUR 55,000 plus 5 % interest within 7 days, corresponding to the salaries from September 2022 to December 2022 (EUR 7,100 in accordance with the IR agreement and EUR 3,900 in accordance with the contract).

7. On 16 May 2023, the Player confirmed to the FIFA administration that he remained unemployed following the termination of the contract.

## **II. Proceedings before FIFA**

8. On 3 April 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**

9. The Claimant requested payment of the "*lost earnings*" amounting to EUR 11,000 per month from September 2022 to March 2023 in accordance with the IR agreement and the contract, totalling EUR 77,000. The Claimant requested said amount within 14 days from the date of the decision.
10. In accordance with the Claimant, on 15 August 2022, he terminated the contract with the Respondent "*due to the fault of the club due to payment arrears*".
11. Finally, the Claimant asked to apply sporting sanctions on the club in case of non-payment.

### **b. Position of the Respondent**

12. In spite of having invited to do so, the Respondent did not submit its position.

### III. Considerations of the Dispute Resolution Chamber

#### a. Competence and applicable legal framework

13. 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 3 April 2023 and submitted for decision on 22 June 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.
14. 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 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 Poland and a club from Cyprus.
15. The Chamber further noted that the present matter involves a contract dated 23 June 2020, as well as so-called "image rights contract" dated 10 June 2021, i.e., the IR agreement.
16. In this regard, the Chamber recalled that, as a general rule, if there are separate agreements, the Football Tribunal tends to consider the agreement on image rights as such and does not have the competence to deal with it. However, such conclusion might be different if specific elements of the separate agreement suggest that it was in fact meant to be part of the actual employment relationship. In the case at hand, such elements appear to exist. In particular, the agreement contains *inter alia* stipulations regarding a monthly salary that was payable for the period of employment and bonuses typical for employment relationships. Additionally, the Chamber noted that the IR agreement does not possess a specific term, but rather its duration is umbilically linked to that of the contract. Consequently, the Chamber decided not to consider the IR agreement as such, but determined that said agreement was in fact an additional agreement to the employment contract instead, and thus that both documents should be entertained together.
17. Finally, 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 3 April 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**

18. 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**

19. The 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**

20. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the main dispute is the justice of the early termination of the contract by the Claimant, based on the alleged non-payment of certain financial obligations by the Respondent as per the contract.
21. In this context, the Chamber acknowledged that its task was to determine, based on the evidence presented by the parties, whether the contract was terminated with just cause. In doing so, the Chamber underlined that the Respondent failed to present its reply to the claim of the Claimant, and therefore its decision would be made on the basis of the documentation on file, that is, the argumentation and evidence filed by the Claimant, in line with article 14 par. 1 of the Procedural Rules.
22. The Chamber noted that:
- In accordance with the termination notice, the Claimant claimed not having received his remuneration corresponding to USD 10,000.
  - The claim filed by the Claimant only mentioned that the contract was terminated "*due to the fault of the club due to payment arrears*".
  - The Claimant did not request overdue salaries.
  - No default notice was provided by the Claimant.

- In accordance with the contract between 31 August 2021 and 31 May 2022 the monthly salary amounted EUR 3,500 and in accordance with the IR agreement between the same period, the monthly remuneration amounted EUR 2,500; thus, the monthly global remuneration of the player amounted to EUR 6,000.
23. The Chamber further recalled its long-standing jurisprudence, according to which only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only be an *ultima ratio*.
  24. In view of the foregoing, the Chamber concluded that at the date of termination less than two salaries were due, which cannot be constitute a situation of *ultima ratio*. Thus, the Chamber concluded that the Claimant terminated the contract without just cause. Accordingly, the Chamber found that the claim must be entirely rejected.
  25. Finally, the Chamber noted that there is no counterclaim at stake in these proceedings.

#### **d. Costs**

26. 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.
27. 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.

#### **IV. Decision of the Dispute Resolution Chamber**

1. The claim of the Claimant, Patryk Tomasz Procek, is rejected.
2. 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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