

Decision of the Dispute Resolution Chamber

passed on 24 August 2023

regarding an employment-related dispute concerning the player Sammy Solitaire Siddharta Skytte

COMPOSITION:

Frans DE WEGER (The Netherlands), Chairperson

Mario FLORES CHEMOR (Mexico), Member

Roy VERMEER (The Netherlands), Member

CLAIMANT:

Sammy Solitaire Siddharta Skytte, Denmark

Represented by Dino Osmanovic

RESPONDENT:

Concordia Chiajna, Romania

Represented by Mincu Paul Alexandru

I. Facts of the case

1. The relevant parties to this dispute are the Danish player, Skytte Sammy Solitaire Siddharta (hereinafter: *the player* or *the Claimant*), and the Romanian club, Concordia Chiajna (hereinafter: *the club* or *the Respondent*).
2. On 7 September 2022, the club sent the player an employment offer including the following terms and conditions (hereinafter: *the Offer*):
 - Duration: 12 September 2022 until 15 June 2023;
 - Remuneration: EUR 3,000 net per month. If the club enters the play-offs of the second league, the player's remuneration would be increased to EUR 3,500 net per month;
 - Bonuses: EUR 10,000 net in case the club promotes to the higher league in the end of the 2022/2023 season; and
 - Accommodation allowance: EUR 300 net per month.
3. On 12 September 2022, the player and the club concluded an employment contract valid as from the date of signature until 15 June 2023 (hereinafter: *the Employment Contract*).
4. Pursuant to clause 3.1 of the Employment Contract, the club undertook to pay the player a total amount of RON 132,000 net, payable as follows:
 - RON 26,400 net on 30 November 2022;
 - RON 26,400 net on 30 January 2023;
 - RON 26,400 net on 30 March 2023;
 - RON 26,400 net on 30 May 2023; and
 - RON 26,400 net on 30 July 2023.
5. Furthermore, clauses 3.2 to 3.6 of the Employment Contract read as follows, quoted *verbatim*:

"3.2. Bonuses for the period: 12.09.2022 -15.06.2023

3.2.1. If the PLAYER evolves as holder in minimum 60% of the official matches from the 2022-2023 regular season of the 2nd League Championship and only if [the club] qualifies in the Play Off of the 2nd League Championship 2022-2023 competition season, he will receive a performance bonus in amount of 7.350 lei/net.

3.2.2. *If the PLAYER evolves as holder in minimum 60% of the official matches of the 2nd League Championship 2022-2023 competition season, and only if [the club] promotes in the 1st League, at the end of the 2022-2023 competition season after the approval of the league tables made by the Executive Committee of Romanian Football Federation, he will receive a performance bonus in amount of 49.000 lei/net.*

3.2.3. *During the contract the Club will provide for player's accommodation or will pay the amount of 1.500 lei for rent; the amount will be paid directly to the apartment owner, according to the renting contract that will be closed between the club and the owner.*

3.3. *The Club reserves the right to grant also other premiums in money or other bonuses, subject to [the player]'s conduct and performance, which led to achieving competitive performance for each season by the decision of the Board.*

3.4. *The Club can retain from the sums owed to [the player], taxes, fines as well as any other sports-related penalties in accordance with the regulations of the Romanian Football Federation and with Internal Regulations.*

3.5. *The payment of the amounts provided from this contract will be paid in lei, at the NBR exchange rate on the payment's day.*

3.6. *The bonuses for the competition season are calculated and will be paid within 30 days from the RFF Executive Committee approval of the charts of the respective competition season, the other objective and performance bonuses will be paid within 30 days from their fulfillment".*

6. On 7 December 2022, the same parties concluded an "Additional Act" (hereinafter: *the Amendment*), according to which the terms and conditions stipulated in the Employment Contract were amended *inter alia* as follows:

- Duration: 7 December 2022 until 31 December 2023;
- Payments:
 - RON 24,750 net on 8 December 2022;
 - RON 34,650 net on 30 January 2023;
 - RON 34,650 net on 30 March 2023;
 - RON 34,650 net on 30 May 2023;
 - RON 34,650 net on 30 June 2023.
- Bonuses and other relevant provisions:
 - "3.1.2. *In the case in which [the club] promotes in the 1st League at the end of 2022-2023 season competitive after rankings approval are made by the*

Executive Committee of the FRF, the player will receive monthly for the period of 01.07.2023 – 31.12.2023 the amount of 39.600 lei/net”.

- *“If [the club] at the end of competitive season 2022-2023 will not promote to the 1st League, in the period 01.06.2023 - 30.06.2023, the player represented by his agent will negotiate with [the club] an eventual transfer of the player”.*
- *“3.2.2. If the player in the period 01.01.2023 until the end of the regular season 2022-2023 of the 2nd League Championship plays as holder in at least 60% of the official matches and only if [the club] at the end of the regular season will qualify in the play off of the competitive season 2022-2023 of the 2nd League Championship, he will receive a performance bonus in value of 24.750 lei/net.*

3.2.3. The club will provide for the player accommodation during the contractual period or will pay the amount of 1.500 lei/net for rent; the amount will be paid directly to the apartment owner, according to a renting that will be closed between the club and the owner.

3.2.4. During the contractual period the club will provide for the player with 6 (six) round-trip flying tickets, on the route Bucharest – Billund”.

7. On 11 May 2023, the player put the club in default and requested payment of RON 34,650 net as outstanding remuneration since 30 March 2023. Contextually, he explained that the last payment made by the club was dated 30 January 2023 and corresponded to amounts due for 2022. Furthermore, the player stressed that he had been excluded from the training sessions since the beginning of April and requested the club to remedy the breach until 26 May 2023.
8. On 27 June 2023, the player notified the club of the termination of their employment relationship due to *inter alia* overdue payables. In particular, the player claimed that RON 69,300 was outstanding (*i.e.*, the instalments due on 30 March and 30 May 2023); and he was still being forced to train alone or with the second team. He referred to both art. 14 and 14bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) and requested the club to pay his outstanding remuneration and compensation for breach of contract.
9. On 28 June 2023, the club acknowledged receipt of the player’s termination notice. It moreover asked the player if he had any suggestion for solving the matter.
10. The player informed that he remained unemployed following the termination of the Employment Contract.

II. Proceedings before FIFA

11. On 1 July 2023, the player 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

12. In his claim, the player alleged that the club breached the Employment Contract both by failing to deliver his remuneration and by excluding him from training sessions with the first team. Furthermore, he highlighted that the club did not dispute (thus, accepted) the existence of just cause for the termination.

13. In light of the above, the player requested to be awarded the following amounts:

- **RON 94,050 net** as outstanding remuneration, broken down as follows:
 - RON 34,650 net as salaries from February and March 2023, plus 5% interest *p.a.* as from 30 March 2023;
 - RON 34,650 net as salaries from April and May 2023, plus 5% interest *p.a.* as from 30 May 2023; and
 - RON 24,750 net as bonus for the qualification to the play-offs of the 2022/2023 second league national competition, plus 5% interest *p.a.* as from 11 April 2023.
- **RON 272,250 net** as compensation for breach of contract plus 5% interest *p.a.* as from 27 June 2023, corresponding to the residual value of the Employment Contract (and its Amendment), broken down as follows:
 - 34,650 Lei/net falling due on 30 June 2023;
 - 39,600 Lei/net falling due on 31 July 2023;
 - 39,600 Lei/net falling due on 31 August 2023;
 - 39,600 Lei/net falling due on 30 September 2023;
 - 39,600 Lei/net falling due on 31 October 2023;
 - 39,600 Lei/net falling due on 30 November 2023;
 - 39,600 Lei/net falling due on 31 December 2023.

14. Regarding the *quantum* of compensation, the player explained that if the club's team was promoted to the first division at the end of the season 2022/2023 his salaries would be fixed at RON 39,600 each. Thus, and in the absence of a clear contractual stipulation establishing otherwise, he held that such amount should be considered for the calculation.

15. The player's requests for relief were as follows, quoted *verbatim*:

"I. The Claim filed by Mr. Skytte Sammy Solitaire Siddharta is fully upheld;

II. The Respondent is ordered to pay to the Claimant the total amount of 94,050.00 Lei/net (ninety four thousand and fifty Romanian Leu) on the name of the overdue payables;

III. The Respondent is ordered to pay to the Claimant the amount corresponding to the interest rate of 5 % p.a. applicable in the following way:

- over the amount of 34,650 Lei/net for the salaries for February and March 2023 as from 30 March 2023 up until the date of the effective payment;

- over the amount of 34,650 Lei/net for salaries for April and May 2023 as from 30 May 2023 up until the date of the effective payment;

- over the amount of 24,750 Lei/net for the bonus as from 11 April 2023 up until the date of the effective payment.

IV. The Respondent is ordered to pay to the Claimant the amount of 272,250.00 Lei/net (two hundred seventy two thousand two hundred and fifty Romanian Leu) on the name of the compensation for the breach of the contract without just cause, plus the interest at the rate of 5% p.a. as of 27 June 2023 until the date of effective payment;

V. The Respondent is ordered to provide the evidence that the corresponding pension contributions and the social security costs, as required by law, as well as the tax and medical insurance obligations are complied with and paid;

VI. Disciplinary sporting sanctions imposed on the Respondent accordingly, due to serious and constant breach of contractual and employer duties in case of disobedience with the FIFA decision".

b. Position of the club

16. On 27 July 2023, the club submitted its reply to the claim of the player.

17. In doing so, the club acknowledged that it failed to pay the player part of its dues due to financial difficulties. Nevertheless, it challenged the *quantum* claimed as follows:

Concept	Position of the club
RON 69,300 net as the outstanding instalments due in March and May 2023.	Accepted. Pending and due, together with interests.
RON 24,750 net as bonus for the qualification to the play-offs of the	Disputed. According to the club, its team did not qualify to the play-offs but only to the play-out.

2022/2023 second league national competition.	Consequently, the bonus clause was not triggered, therefore the amount is not due.
RON 272,250 net as compensation for breach of contract.	Partially disputed. The total compensation owed to the player amounts to RON 34,650 net (i.e., total remuneration of RON 163,350 <u>minus</u> the amounts already paid of RON 59,400 net <u>minus</u> the overdue payables of RON 69,300 net).

18. Specifically concerning the compensation, the club highlighted that its team has not been promoted to the higher league in the national championship, thus the contractual provision indicating an increase of his remuneration was not triggered. Furthermore, it argued that the player misinterpreted the Employment Contract (and its Amendment), and no additional amount should be payable for the period between 1 July and 31 December 2023.
19. Lastly, the club argued that the player's claim to be provided with certificates on taxes and social contributions should be rejected *"because FIFA does not have jurisdiction to analyse social security obligations, tax and medical insurance taxes because those tax payments are carefully monitored by the Romanian National Agency for Fiscal Administration. Moreover, this evidence can be required by the Claimant to the Romanian National Agency for Fiscal Administration, but only after the payment is made"*.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

20. 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 1 July 2023 and submitted for decision on 24 August 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.
21. 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 DRC is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Danish player and a Romanian club.
22. 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 1 July 2023, the cited May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

23. 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

24. 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

25. 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 for outstanding remuneration and compensation for breach of contract lodged by the player against the club.
26. The Chamber also noted that the Employment Contract was terminated on 27 June 2023 by the player, due to overdue payables. In particular, it remained undisputed between the parties that such termination took place with just cause in line with art. 14bis of the Regulations.
27. In this context, and while such just cause was confirmed, the Chamber acknowledged that its task was limited to determine the amounts that should be paid by the club to the player as a consequence thereto, namely as outstanding remuneration and compensation for breach of contract.

A. Outstanding Remuneration

28. Initially, the Chamber outlined that the instalments due by the club to the player on 30 March 2023 and 30 May 2023 were undisputedly pending and overdue. Consequently, and by referring to the general legal principle of *pacta sunt servanda*, the Chamber decided that

the club should be liable to pay the amounts sought, totalling RON 69,300 net (*i.e.*, 2 times RON 34,650).

29. Taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award him interest at the rate of 5% *p.a.* on the outstanding amounts as from respective due dates until the date of effective payment.
30. In addition, the DRC observed the player claimed to be entitled to RON 24,750 net as bonus for the qualification to the play-off of the 2022/2023 second league national competition. Nevertheless, the Chamber took due consideration that the evidence provided by both the player and the club confirmed that its team did not qualify to the "play-off" of the national league, but rather to the "play-out".
31. In light of the above, the DRC determined that the sporting goal mentioned in the Amendment was not achieved, and the condition therefore triggering the corresponding payment not met. Therefore, the Chamber decided that this specific part of the claim of the player should be rejected.

B. Compensation

32. 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.
33. 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.
34. 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.

35. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the Employment Contract (and its Amendment) from the date of its unilateral termination until its end date. In doing so, the DRC acknowledged that the parties have different views on the *quantum*, as follows:
- According to the player, he should be entitled to RON 272,250 net as compensation for breach of contract, corresponding to the residual value of the Employment Contract calculated as if club was promoted to the higher division of the national league; and
 - According to the club, the player should only receive RON 34,650 net as compensation, corresponding to the instalment due on 30 June 2023. Per its interpretation of the Employment Contract, as the club was not promoted, no additional amount should be payable for the period between 1 July and 31 December 2023.
36. In view of this dissent between the parties, the Chamber turned to the documentation on file and especially to the analysis of the Employment Contract and its Amendment. In doing so, the DRC noted that whilst the Amendment established that the Employment Contract would be valid until 31 December 2023, it did only stipulate the remuneration that would be due to the player in case the club qualified to the higher division of the national league. However, the wording of the Amendment is not clear to establish the consequences of (i) its team not promoting to the higher division; and (ii) the player not being transferred to another club.
37. For ease of reference, the Chamber recalled that the relevant contractual provisions in this respect read as follows:
- *"3.1.2. In the case in which [the club] promotes in the 1st League at the end of 2022-2023 season competitive after rankings approval are made by the Executive Committee of the FRF, the player will receive monthly for the period of 01.07.2023 – 31.12.2023 the amount of 39.600 lei/net".*
 - *"If [the club] at the end of competitive season 2022-2023 will not promote o the 1st League, in the period 01.06.2023 - 30.06.2023, the player represented by his agent will negotiate with [the club] an eventual transfer of the player".*
38. Having established that no promotion was achieved, the DRC deemed that the underlying question to be answered was whether the player would still be entitled to any additional amount from July until December 2023 – to be awarded as part of compensation for breach of contract.
39. While considering the above, the Chamber was of the opinion that, by extending the term of the Employment Contract, the club committed itself to retain the player's services until

the end of 2023 and could not in good faith withdraw from its consent just because its team could not promote to the higher division. Even worse, however, would be admitting that the player would still be bounded to the club without receiving any remuneration.

40. Based on the foregoing in combination with the principle of *in dubio contra stipulatorem*, the Chamber determined that the player should be entitled to his remuneration until the end of 2023. On balance, and provided that the club was not promoted to the higher division of the national league, the Chamber also ruled that the amount of compensation for breach of contract due to the player should be calculated under the same financial conditions valid at the time of the termination and not the ones applicable in case the club was disputing the first league.
41. Given the foregoing, the DRC underscored that the residual value of the Employment Contract amounted to RON 138,600 net, broken down as follows:
 - RON 34,650 net as the instalment due on 30 June 2023; *plus*
 - RON 103,950 net for the six remaining months (*i.e.*, from July until December 2023), being RON 34,650 net every two months (and not per month as claimed).
42. In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period, 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.
43. Indeed, the player did not find a new employment for the overlapping period, therefore was not able to mitigate the damages. Likewise, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations and decided that no additional compensation was applicable.
44. Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of RON 138,600 net to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
45. Lastly, taking into consideration the player's request as well as the practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% *p.a.* as of the date of the termination of the employment relationship between the parties (*i.e.*, 27 June 2023) until the date of effective payment.

ii. Compliance with monetary decisions

46. 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.
47. 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.
48. 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.
49. The Respondent 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.
50. 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.

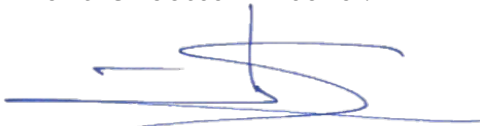
d. Costs

51. 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.
52. 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.
53. 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, Sammy Solitaire Siddharta Skytte, is partially accepted.
2. The Respondent, Concordia Chiajna, must pay to the Claimant the following amount(s):
 - **RON 34,650 net as outstanding remuneration** plus 5% interest *p.a.* as from 31 March 2023 until the date of effective payment;
 - **RON 34,650 net as outstanding remuneration** plus 5% interest *p.a.* as from 31 May 2023 until the date of effective payment; and
 - **RON 138,600 net as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 27 June 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

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