

Decision of the Dispute Resolution Chamber

passed on 28 July 2023

regarding an employment-related dispute concerning
the player Wesley Da Silva

BY:

Angela Collins (Australia), Single Judge of the DRC

CLAIMANT:

Wesley Da Silva, Brazil

Represented by Breno Costa Ramos Tannuri

RESPONDENT:

CD Trofense, Portugal

Represented by 14 Sports Law

I. Facts of the case

1. On 1 January 2023, the Brazilian player, Wesley Da Silva (hereinafter: *Claimant* or *player*) and the Portuguese club, CD Trofense (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *contract*) valid as from 1 January 2023 until 30 June 2024.
2. According to the contract, the Respondent undertook to pay the Claimant the following monies:
 - EUR 10,000 as *"signing bonus"* upon signature of the contract;
 - EUR 7,000 as monthly salary during the season 2022/2023 (6x EUR 7,000) due between 5 February 2023 and 5 July 2023;
 - EUR 20,000 as *"additional bonus"* due in *"July 2023"*;
 - EUR 7,500 EUR 7,500 as monthly salary during the season 2023/2024 (12x EUR 7,500) due between 5 August 2023 and 5 July 2024.
3. Art. 8 of the contract establishes: *"In addition to the above-mentioned amounts, the CLUBE DESPORTIVO TROFENSE- FUTEBOL SAD, also undertakes to guarantee accommodation for the PLAYER during the contract's validity period, as well as to guarantee a trip for each sporting season from Brazil/Portugal and Portugal/Brazil for the athlete in question and his wife."*
4. On 10 March 2023, the Claimant put the Respondent in default and requested payment of EUR 21,500, corresponding to a part of the signing bonus (EUR 7,500) and the salaries of January and February 2023 (2x EUR 7,000). The player requested payment within 15 days.
5. Subsequently, the club remitted the salaries of January and February 2023 to the player.
6. On 13 April 2023, the Claimant put the Respondent in default again and requested payment of EUR 14,500, corresponding to a part of the signing bonus (EUR 7,500) and the salary of March 2023 (EUR 7,000). The player requested payment within 15 days.
7. On 15 May 2023, the Claimant put the Respondent in default again and requested payment of EUR 21,500, corresponding to a part of the signing bonus (EUR 7,500) and the salaries of March and April 2023 (2x EUR 7,000). The player requested payment within 15 days.
8. On 31 May 2023, the player terminated the contract with the club due to outstanding remuneration.
9. On 6 June 2023, the player and his wife left Portugal and returned to Brazil.
10. On 7 July 2023, the player signed an employment contract with the Chinese club, Qingdao West Coast Football Club, valid as from 7 July 2023 until 30 November 2024, including a monthly salary of USD 8,000 (approx. EUR 7,400).

II. Proceedings before FIFA

11. On 12 June 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

12. In his claim, the Claimant requested payment of the following monies:

- EUR 28,500 as outstanding remuneration corresponding to a part of the signing bonus (EUR 7,500) and the salaries of March, April and May 2023 (3x EUR 7,000), plus 5% interest p.a. as of the due dates;
- EUR 800 as reimbursement of his rental fee plus 5% interest *p.a.* as of 6 June 2023;
- BRL 9,664 as reimbursement for the flight tickets dated 6 June 2023 plus 5% interest p.a. as of 5 June 2023;
- EUR 117,000 as compensation for breach of contract (as residual value), plus 5% interest p.a. as of 1 June 2023.

13. In this context, the player argued that he had just cause to terminate the contract in accordance with art. 14 RSTP on 31 May 2023, after having put the club in default, to no avail.

14. The player is claiming outstanding remuneration, including reimbursement of his rental fee. In this regard, the player submitted a rental contract for an apartment with a third person as well as proof that the club paid this third person directly in order to cover the player's rent.

15. On account of the above, and in connection with art. 8 of the contract, the player requested to be reimbursed with an instalment paid in connection with his apartment.

16. The player also provided flight tickets in the amount of Brazilian Real (BRL) 9,664 (approx. USD 1,980) purchased on 4 June 2023.

17. Furthermore, the player requested compensation for breach of contract, corresponding to the residual value of the contract.

b. Position of the Respondent

18. The Respondent failed to reply to the claim.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

19. First of all, the Single Judge (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 12 June 2023 and submitted for decision on 28 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.
20. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 1 lit. a) 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), she is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player and a club.
21. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she 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 12 June 2023, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

22. 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

23. Her 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 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

24. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the Claimant's argumentation that he terminated the contract with just cause, after more than 3 monthly salaries remained outstanding despite a default notice.
25. The Respondent, for its part, failed to present its response to the claim of the player, in spite of having been invited to do so. In this way, the Single Judge considered that the Respondent renounced its right of defence and, thus, accepted the allegations of the Claimant.
26. Furthermore, as a consequence of the aforementioned consideration, the Single Judge concurred that in accordance with art. 21 par. 1 of the Procedural Rules it shall take a decision upon the basis of the documents already on file, in other words, upon the statements and documents presented by the Claimant.
27. In this context, the Single Judge acknowledged that the Claimant's allegations remained uncontested. Taking into account art. 14bis of the Regulations and in view of the outstanding remuneration of more than 3 monthly salaries and the default notice sent, the Single Judge concluded that the Claimant had just cause to terminate the contract with the Respondent on 31 May 2023.

ii. Consequences

28. Having stated the above, the members of the Single Judge turned her attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
29. As to the outstanding remuneration, the Single Judge concluded that the player is entitled to the claimed part of the signing bonus (EUR 7,500) and the salaries of March and April 2023 (2x EUR 7,000), *i.e.* EUR 21,500. Moreover, she decided to grant the salary of May 2023 (EUR 7,000) as outstanding remuneration, as the termination occurred on 31 May 2023.
30. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the contract at the moment of the termination, *i.e.* EUR 28,500.
31. Moreover, the player claimed reimbursement of a rental fee. The Single Judge noted that the contract establishes that the club covers his accommodation and the player submitted evidence that he remitted the claimed amount to the third person as well as that the club previously covered said costs. Therefore, the Single Judge decided to award the player the amount of EUR 800.

32. The Single Judge further pointed out that the claimed flight ticket shall be awarded as part of the compensation.
33. In addition, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amounts as from the respective due dates until the date of effective payment.
34. Having stated the above, the Single Judge 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 Single Judge 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.
35. In application of the relevant provision, the Single Judge 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 Single Judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
36. As a consequence, the Single Judge 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 Single Judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
37. Bearing in mind the foregoing as well as the claim of the player, the Single Judge 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 Single Judge concluded that the amount of EUR 117,000 (*i.e.* EUR 7,500 + EUR 20,000 + 12x EUR 7,500) serves as the basis for the determination of the amount of compensation for breach of contract.
38. In continuation, the Single Judge 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.

39. Indeed, the player found employment with Qingdao West Coast Football Club. In accordance with the pertinent employment contract, the player was entitled to approximately EUR 7,400 per month. Therefore, the Single Judge concluded that the player mitigated his damages in the total amount of EUR 88,800, that is, 12 times EUR 7,400.
40. Subsequently, the Single Judge referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Single Judge confirmed that the contract termination took place due to said reason i.e. overdue payables by the club, and therefore decided that the player shall receive additional compensation.
41. In this respect, the Single Judge decided to award the amount of additional compensation of EUR 21,000, *i.e.* three times the monthly remuneration of the player.
42. As further part of the compensation, the Single Judge decided to award the player the claimed flight ticket in the amount of Brazilian Real (BRL) 9,664.
43. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Single Judge decided that the club must pay the amount of EUR 49,200 (*i.e.* EUR 117,000 minus EUR 88,800 plus EUR 21,000) as well as BRL 9,664 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
44. Lastly, taking into consideration the player's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the player interest on said compensation at the rate of 5% *p.a.* as of 1 June 2023 until the date of effective payment.

iii. Compliance with monetary decisions

45. 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 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.

46. 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.
47. 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.
48. 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.
49. 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.

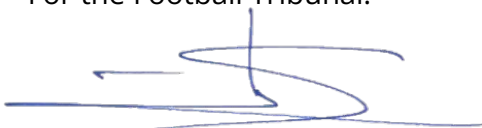
d. Costs

50. 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 Chamber decided that no procedural costs were to be imposed on the parties.
51. 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.
52. Lastly, the Single Judge 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, Wesley da Silva, is partially accepted.
2. The Respondent, CD Trofense, must pay to the Claimant the following amount(s):
 - **EUR 7,500 as outstanding remuneration** plus 5% interest *p.a.* as from 2 January 2023 until the date of effective payment;
 - **EUR 7,000 as outstanding remuneration** plus 5% interest *p.a.* as from 6 April 2023 until the date of effective payment;
 - **EUR 7,000 as outstanding remuneration** plus 5% interest *p.a.* as from 6 May 2023 until the date of effective payment;
 - **EUR 7,800 as outstanding remuneration** plus 5% interest *p.a.* as from 1 June 2023 until the date of effective payment;
 - **EUR 49,200 and Brazilian Real (BRL) 9,664 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 1 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

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