

Decision of the Dispute Resolution Chamber

passed on 20 July 2023

regarding an employment-related dispute concerning
the player Facundo Gabriel Zabala

COMPOSITION:

Clifford J. HENDEL (USA/France), Deputy Chairperson
Mario FLORES CHEMOR (Mexico), member
Alexandra GOMEZ BRUINEWOUD (Uruguay/Netherlands), member

CLAIMANT / COUNTER-RESPONDENT:

Facundo Gabriel Zabala, Argentina
Represented by Fernando Baredes

RESPONDENT / COUNTER-CLAIMANT:

Apoel Nicosia, Cyprus

I. Facts of the case

1. On 25 January 2023, the Argentinian player Facundo Gabriel Zabala (hereinafter: *the Player*) and the Cypriot club Apoel Nicosia (hereinafter: *the Club*) concluded an employment contract (hereinafter: *the Contract*) and a supplementary agreement (hereinafter: *the Supplementary Agreement*) valid until 31 May 2023.

2. Art. 1.3 of the Contract reads as follows:

The Player's total remuneration shall be paid as follows:

1.3.1. Upon receipt of the Player's ITC or the latest by 15th February 2021, the amount of €28.000 net (€32.800 gross) as a sign on fee to the Player.

1.3.2. From 1st April 2021 until 31st May 2021 (2 monthly salaries), a monthly salary of €14.000 net (€16.400 gross), each one, payable at the end of each month.

1.3.3. From 1st August 2021 until 31st May 2022 (10 monthly salaries), a monthly salary of €15.000 net (€17.640 gross), each one, payable at the end of each month.

1.3.4. From 1st August 2022 until 31st May 2023 (10 monthly salaries), a monthly salary of €17.500 net (€20.675 gross), each one, payable at the end of each month.

1.3.5. All taxes, levies and/or other charges related to the employment contract payable to the tax department and/or other authorities and institutions under applicable laws of the Republic of Cyprus shall be borne by and paid directly by the club.

3. Art. 2 of the Contract reads as follows:

Release Clause

It is explicitly and irrevocably agreed between the Parties that for the period 1st June 2022 - 30th June 2022 the Player will be entitled to transfer to any Football Club (excluding all the club members of the Cyprus Football Association), if the interested Football club pays the "Club" the net amount of €110.000 (hundred ten euros), (herein after called "transfer fees") net of Solidarity Contribution. When the "Club" receives the full amount of the transfer fees, the "Club" agrees to sign on the same time and day all necessary documents and/or agreements and will notify all involved Football Associations that the "Player" is a transfer free player and can be transferred and/or registered as a Football Player to any Football Club (excluding the all the club members of the Cyprus Football Association), with immediate effect.

2.2 In case the Club succeeds selling the Player's registration rights to any other third club in exchange for a transfer fee, the Player shall be entitled to receive a bonus equal to the 12.5% of the net transfer fee which the Club will receive. If the transfer fee is to be paid over a number of instalments, the Player's bonus shall be payable upon the payment of each instalment. For the avoidance of any doubt, the Club shall be obliged to make this bonus payment to the Player within

7 days after receipt of the transfer fee or each instalment of it.

4. Art. 2 of the Supplementary Agreement reads as follows:

The Club shall pay to the Player, as long as he maintains a valid employment agreement with the Club, an allowance of €1000 net per month for accommodation and travelling expenses, which shall be payable at the end of each month, starting February 2021.

5. Art. 3 of the Supplementary Agreement reads as follows:

The Club shall be responsible to pay the air tickets Buenos Aires - Larnaca in order for the player and his family (total 3 people) to arrive in Cyprus for the Player's registration. The Club also shall be responsible to pay the air tickets LARNACA - BUENOS AIRES - LARNACA for the player and his family (total 3 people), at the end of each season (2020/2021, 2021 /2022 and 2022/2023).

6. Art. 4 of the Supplementary Agreement reads as follows:

The Parties recognize that following the FIFA RSTP provisions on training compensation, the Club might be called to pay training compensation to the Player's previous club. According to the Club's calculations, this compensation shall be around €60,000. Provided the Player and/or any other third pay trigger clause 2.1 of the Player's employment contract, the Parties agree that:

- i. Should the Player's previous club not request any training compensation from the Club before its right to claim such compensation is time barred, the Club shall pay the Player a bonus of €60,000.*
- ii. Should the Player's previous club timely request training compensation but the FIFA PSC and CAS, in case of an appeal, reject its claim, the Club shall pay the Player an additional bonus of €60,000.*
- iii. Should the Player's previous club timely request training compensation and the FIFA DRC and CAS, in case of an appeal, partially accept its claim, the Player shall receive a bonus equal to €60,000 less the training compensation awarded in favour of the Player's previous club.*

In case the Player is entitled to the bonus mentioned above, he shall receive this payment on the 15th of March 2023 or, in case a claim is filed against the Club, after the decision of the FIFA PSC or CAS, in case of an appeal, becomes final and binding.

7. On 28 June 2022, the Italian club Venezia FC (hereinafter: *Venezia*) paid the amount of EUR 110,000 to the Club.
8. On 29 June 2022, the Player sent a default notice to the Club requesting the amount of EUR 52,030 granting a deadline of 15 days to comply, to no avail.

II. Proceedings before FIFA

9. On 22 April 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 Player

10. The Player sustains that the Club owes him the amount of EUR 126,580 calculated as follows:

- Salaries for April, May and 27 days June – EUR 46,030
- Flight tickets – EUR 3,800
- Housing allowance – EUR 3,000
- Clause 2.2 of the Contract – EUR 13,750
- Clause 4 of the Supplementary Agreement – EUR 60,000

11. The Player requests interest as from the due dates.

b. Position & Counterclaim of the Club

12. The Club adduces that on 27 and 28 June 2022, the Player was absent from training without any valid reason and failed to join the team in a pre-season camp. The Club further states that as a result, it conducted a disciplinary proceeding and sanctioned the player.

13. The Club admitted owing certain amounts and answered the claim for the different amounts as follows:

- Request for EUR 46,030

14. The Club states that based on art. 1.3 of the Contract, the Player is not entitled to any salary for June 2022.

- Request for EUR 3,800

15. According to the Club, the Player is not entitled to any payments for flight tickets from Cyprus to Italy. Clause 3 of the Supplementary Agreement refers only to tickets to and from Argentina.

- Request for EUR 3,000

16. This request is accepted by the Club.

- Request for EUR 13,750

17. The Club sustains that art. 2.1 of the Contract *“would only be applicable in case the Player was sold to a third club. Not in case the Player or his new club were triggering the buyout clause. As agreed in clause 2.1 of the employment contract, the buy-out clause would only be triggered if our club received a payment of EUR 110,000 net”*.

- Request for EUR 60,000

18. The Club states that contrary to the Player's allegation the training club Alajuelense contacted the Club regarding training compensation and that a settlement agreement was concluded according to which the Club had to pay EUR 20,000 to Alajuelense.
19. The Club further states that none of the options of art. 4 of the Supplementary Agreement took place. In particular:

*"i. Clause 4(i) - The Player would be entitled to the payment of EUR 60,000 **only** in case his previous club **did not request** training compensation. This clause has not been triggered because the previous club has indeed requested training compensation from or club*

*ii. Clause 4(ii) - The Player would be entitled to this payment if his previous club requested training compensation but this request was **rejected by FIFA or CAS**. This has also never happened since the Player's previous club never filed any claim.*

*iii. Clause 4(iii) - In case the Player's previous club would initiated a proceeding before FIFA or CAS and an amount **was awarded to it by FIFA or CAS**. The Player's previous club never filed a claim before FIFA or CAS, this clause was also never triggered."*

20. The Club concludes as follows:

"For all reasons stated above, our club is calling FIFA to reject the Player's claim. Our Club accepts only a depth to the player of EUR 15,000 (representing the April salary. The May salary is set of with the fines) plus EUR 3,000 as accommodation allowance.

COUNTERCLAIM

Our club is filing a counterclaim against the Player requesting a decision against him for a total of EUR 15,000, as per the fines imposed on him by the club's disciplinary committee, plus legal interest from 02/07/2022 until full settlement."

c. Player's Answer to the Counterclaim

21. The Player adduces that the Club has not complied with the due proceeding under the Contract for the imposition of fines.
22. The Player deems that the sanction by the Club is *"ridiculous, illegal and extemporaneous"* since it took place when the Contract had already been terminated.
23. The Player sustains that it indeed communicated his absence to the Club.
24. As for the flight tickets, the Player states that his wife and daughter flew to Argentina.

25. The Player insists on his entitlement to the 12,5% of the amount received by the Club from Venezia.
26. Regarding the claim for training compensation, the Player adduces that he had not been informed of such claim and that the settlement agreement provided by the Club does not include a proof of payment.
27. The Player amended his requests for relief as follows:
- *Salaries for April, May – EUR 35,280*
 - *Flight tickets – EUR 3,800*
 - *Housing allowance – EUR 3,000*
 - *Clause 2.2 of the Contract – EUR 13,750*
- Plus interest as from due dates.*

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

28. 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 22 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.
29. 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 lit. b) of the Regulations on the Status and Transfer of Players (March 2022 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 Argentina and a club from Cyprus.
30. 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 (March 2023 edition), and considering that the present claim was lodged on 22 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

31. 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

32. 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

33. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute the payment of certain financial obligations by the Club as per the Contract.

34. In this context, the Chamber acknowledged that its task was to determine, based on the evidence presented by the parties, whether the claimed amounts had in fact remained unpaid by the Club and, if so, whether the latter had a valid justification for not having complied with its financial obligations.

35. The Chamber first noted that in the case at hand the Club bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. The Chamber further noted that the Club accepts certain debts; however it deems that they should be off-set due to fines imposed on the Player.

36. Firstly, the Chamber refer to the alleged disciplinary proceeding carried out against the Player and underlined that the Club has not submitted any evidence that a disciplinary proceeding was conducted, or a formal decision was passed and communicated to the Player. Thus, the Chamber decided that this argument and the counterclaim in its entirety had to be rejected.

37. Having established the above and after the amended requests for relief of the Player, the Chamber moved on to assess separately the different amounts claimed:

Salaries for April, May – EUR 35,280

38. The Chamber acknowledged that the Club has admitted this part of the claim and no reasonable justification was presented by the Club for not having paid the claimed amount. Thus, the Chamber decided that this request had to be accepted.

Flight tickets – EUR 3,800

39. The Chamber underlined that as per the terms of the Contract the parties had agreed that the Club would provide for flight tickets between Buenos Aires and Larnaca. The DRC observed that

the Player had not provided any supporting evidence of having incurred in the cost of the amounts requested for the aforementioned flight route. Thus, the DRC decided to reject this request.

Housing allowance – EUR 3,000

40. The Chamber observed that the Club has admitted this part of the claim and it has not submitted any evidence of having paid this amount. Therefore, the Chamber decided to accept this claim.

Clause 2.2 of the Contract – EUR 13,750

41. At this point, the DRC refer to art. 2.2 of the Contract and noted that the referred provision provides for the right of the Player to receive the amount claimed regardless of the concept according to which the amount is paid to the Club (i.e. transfer fee or buy-out clause). It is undisputed that the Club received the amount of EUR 110,000 for the transfer of the Player and as a consequence the Player is entitled to 12,5% of the said amount.
42. Consequently, based on the literal wording of art. 2.2 and the principle *pacta sunt servanda*, the DRC confirmed that the Player is entitled to the amount requested.
43. In view of the foregoing and bearing in mind the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Club is held liable to pay the Player the outstanding amounts deriving from the contract concluded between the parties, namely EUR 52,030 (i.e. EUR 35,280, EUR 3,000 and EUR 13,750).
44. In addition, taking into consideration the Player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Player interest at the rate of 5% p.a. on the outstanding amounts as from the respective due dates until the date of effective payment.

ii. Art. 12bis

45. In continuation, the Chamber referred to art. 12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
46. To this end, the Chamber confirmed that the Player put the Club in default of payment of the amounts sought, which had fallen due more than 30 days before, and granted the club a 10-day deadline to cure such breach of contract.
47. Accordingly, the Chamber confirmed that the club had delayed a due payment without a prima facie contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
48. The Chamber further established that by virtue of art. 12bis par. 4 of the Regulations it has competence to impose sanctions on the club. On account of the above and bearing in mind that this is the 6th offense by the club within the last two years, the Chamber decided to impose a fine on the Club in accordance with art. 12bis par. 4 lit. c) of the Regulations.

49. In this connection, the Chamber highlighted that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

iii. Compliance with monetary decisions

50. 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.

51. 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.

52. 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.

53. 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.

54. 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

55. 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.

56. 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.

57. 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, Facundo Gabriel Zabala, is partially accepted.
2. The Respondent/Counter-Claimant, Apoel Nicosia, must pay to the Claimant/Counter-Respondent the following amount(s):
 - **EUR 52,030 as outstanding amount** plus 5% interest *p.a.* as follows:
 - On EUR 17,640 from 1 May 2022 until the date of effective payment;
 - On EUR 17,640 from 1 June 2022 until the date of effective payment;
 - On EUR 1,000 from 1 April 2022 until the date of effective payment;
 - On EUR 1,000 from 1 May 2022 until the date of effective payment;
 - On EUR 1,000 from 1 June 2022 until the date of effective payment;
 - On EUR 13,750 from 5 July 2022 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. The **counterclaim** of the Respondent/Counter-Claimant, Apoel Nicosia, is **rejected**.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. 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.
7. 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.
8. This decision is rendered without costs.

9. A fine in the amount of **USD 18,750** is imposed on the Respondent, **which must be paid to FIFA within 30 days of notification of this decision**. Such fine must be paid to the following bank account with a clear reference to the case **FPSD-10004**:

UBS Zurich
Account number 230-366677.61N (FIFA Players' Status)
Clearing number 230
IBAN: CH12 0023 0230 3666 7761 N
SWIFT: UBSWCHZH80A

For the Football Tribunal:



Emilio Garcia 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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