

Decision of the Dispute Resolution Chamber

passed on 26 October 2023

regarding an employment-related dispute concerning
the player Gustavo Ezequiel Blanco Leschuk

BY:

Clifford J. Hendel (USA & France), Deputy Chairperson
Jorge Gutiérrez (Costa Rica), Member
Stella Maris Juncos (Argentina), Member

CLAIMANT:

Gustavo Ezequiel Blanco Leschuk, Argentina
Represented by Alfredo Martínez Nora

RESPONDENT:

Fraport Tav Antalyaspor, Türkiye

I. Facts of the case

1. On 16 August 2022, the parties terminated their contractual relationship by signing an early termination agreement (hereinafter: the termination agreement). Pursuant to clause 3 of the termination agreement, the Turkish club, Antalyaspor Spor (hereinafter: the club or the Respondent), undertook to pay the amount of EUR 510,000 net as termination fee in favor of the Argentinian player, Gustavo Ezequiel Blanco Leschuk (hereinafter: the player or the Claimant), as follows:
 - EUR 10,000 net on 11 August 2022;
 - EUR 100,000 net on 30 September 2022;
 - EUR 100,000 net on 1 January 2023;
 - EUR 100,000 net on 28 January 2023;
 - EUR 200,000 net on 30 May 2023.
2. Furthermore, clause 3 of the termination agreement foresees that - in case of default in the payment of any of the instalments described above - the club would be obliged to pay a default interest of 7% *per annum* on the amounts due.
3. Clause 14 of the termination agreement provides that, in the event of disputes regarding the interpretation and execution of the agreement, FIFA and the Court of Arbitration for Sport (CAS) shall have jurisdiction and that the language of arbitration shall be English.
4. Between November 2022 and May 2023, the player urges the club to pay the second, third and fourth instalments of the agreement, to no avail

II. Proceedings before FIFA

a. Position of the Claimant

5. On 21 August 2023, the Claimant lodged a claim against the Respondent before FIFA, requesting that the latter be ordered to pay the sum of EUR 535,000 net, broken down by the Claimant as follows:
 - EUR 500,000 net corresponding to the second, third, fourth and fifth instalments of the termination fee;
 - EUR 35,000 net allegedly corresponding to interest of 7% of EUR 500,000 (it must be noted that the Claimant, instead of requesting to be awarded an interest of 7% per annum on the amounts due, requests a lump sum equal to 7% of the principal amount due).

6. In his claim, the player claims that, despite the parties having validly entered into the termination agreement, the club only paid the first instalment amounting to EUR 10,000 net and failed to make any further payment despite having been put in default of payment by the player.

b. Position of the Respondent

7. In its reply, with regard to the admissibility of the claim, the club argues that the Claimant has violated clause 14 of the termination agreement by bringing its claim in Spanish and not in English. It therefore requests that the claim be dismissed as inadmissible.
8. With regard to the merits of the case, the club held that the player's claim has no regulatory basis, insofar as the player did not comply with the requirements of art. 12bis of the Regulations on the Status and Transfer of Players and, therefore, the amounts claimed cannot be considered as "overdue payables". In view of the above, the club requests that the player's claim be rejected.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

9. 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 21 August 2023 and submitted for decision on 26 October 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.
10. 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 (May 2023 edition), the Dispute Resolution Chamber is – in principle – competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Argentinian player and a Turkish club.
11. However, the Chamber duly noted that the Respondent challenged the admissibility of the claim brought forward by the player within the scope of the present proceedings. In this context, the DRC – after having duly analyzed the wording of clause 14 of the termination agreement and the arguments of the club – established that, irrespective of what was agreed between the parties with regard to the language of the procedure under the

termination agreement, article 16 of the Rules of Procedure prevails. In particular, paragraphs 1 and 3 of said provision apply:

- 1.) *"The languages that may be used in the proceedings shall be English, French or Spanish only"*.
By virtue of the above and irrespective of what has been agreed between the parties under the termination agreement, the Chamber underscored that the Claimant is free to submit his pleadings before the Football Tribunal in English, French or Spanish. In light of the aforementioned, the DRC determined that the claim submitted by the Claimant was drafted in Spanish and is, therefore, admissible.
 - 2.) *"Where the pleadings or evidence in a case are in several languages, the proceedings shall be conducted in English and the decision shall be notified in English"*. In the present case, as the parties have submitted their pleadings in different official languages of FIFA, the submissions and decisions have been conducted/notified in English, in full compliance with the above-quoted provision.
12. Therefore, in view of the fact that there is no procedural defect with regard to the communications which would render the Claimant's claim inadmissible, the Chamber concluded that the claim of the player is admissible and that the club's allegations concerning the admissibility (or inadmissibility, *in casu*) of the claim shall be rejected.
 13. 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 21 August 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

14. 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

15. 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.

16. 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

17. The foregoing having been established, the Chamber moved to the substance of the matter and noted that the Respondent focuses its allegations on the fact that the player - allegedly - did not put the club in default of payment in accordance with the requirements of art. 12bis of the Regulations. However, continued the Chamber, the club does not deny its default with regard to the payment of the instalments claimed by the player.

18. In this context, the Chamber wished to first of all clarify that that parties must comply with their contractual obligations (*pacta sunt servanda*), which is a general principle of law that finds more than sufficient anchoring in the jurisprudence of the Football Tribunal. In addition – and considering the argument raised by the Respondent as to the non-applicability of art. 12bis RSTP – the Chamber explained that the requirements set out by art. 12bis para. 2 of the Regulations must be fulfilled in order for the Football Tribunal to consider that an outstanding payment is an “*overdue payable*” in the sense of said provision and be able to impose sporting sanction(s) on the debtor club.

19. However, continued the DRC, the absence of compliance with those requirements does not affect the degree of liability of the debtor club, which will be ordered to proceed with the payment of any outstanding payment(s) if the amounts claimed are overdue. The regulatory basis of said rationale, wished to highlight the DRC, is found in art. 12bis para. 1 of the Regulations, which states that: “*Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements*”. Hence, the Chamber concluded that the claim of the Claimant does find a regulatory basis.

ii. Consequences

20. Having established the above and in view of the fact that the Claimant's claim also has a contractual basis under the termination agreement and that the Respondent tacitly acknowledged that it has not paid the second, third, fourth and fifth instalments of the termination fee, the DRC unanimously concluded that the Claimant is entitled to receive from the Respondent the amount of EUR 500,000 net as outstanding remuneration in accordance with the referred legal principle *pacta sunt servanda*.

21. As for the default interest claimed, although the player claims the amount of EUR 35,000 as interest, the DRC wished to point out that the Claimant errs in claiming directly an amount equivalent to 7% of EUR 500,000, as the Claimant is only entitled – as per what was agreed between the parties under clause 3 of the termination agreement – an interest of 7% *per annum* on the amount of EUR 500,000 as from the respective due dates until the

date of effective payment, which shall be awarded, as was so agreed between the parties (*pacta sunt servanda*) and complies with the jurisprudence of the Football Tribunal, in accordance with which default interest up to a maximum rate of 18% *p.a.* will be granted, if so was agreed by the parties.

iii. Compliance with monetary decisions

22. 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.
23. 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.
24. 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.
25. 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.
26. 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

27. 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.

28. 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.
29. 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, Gustavo Ezequiel Blanco Leschuk, is admissible.
2. The claim of the Claimant, Gustavo Ezequiel Blanco Leschuk, is partially accepted.
3. The Respondent, Fraport Tav Antalyaspor, must pay to the Claimant the following amount(s):
 - **EUR 500,000 net** as **outstanding remuneration** plus 7% interest *p.a.* as follows:
 - On the amount of EUR 100,000 net, as from 1 October 2022 and until the date of effective payment;
 - On the amount of EUR 100,000 net, as from 2 January 2023 until the date of effective payment;
 - On the amount of EUR 100,000 net, as from 1 March 2023 until the date of effective payment;
 - On the amount of EUR 200,000 net, as from 31 May 2023 until the date of effective payment.
4. Any further claims of the Claimant are 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.

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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