

# Decision of the Dispute Resolution Chamber

passed on 4 October 2023

regarding an employment-related dispute concerning  
the player Mohamed Zakaria

**BY:**

**Gonzalo DE MEDINILLA** (Spain)

**CLAIMANT:**

**Mohamed Zakaria, Algeria**

**RESPONDENT:**

**Emirates, United Arab Emirates**

## I. Facts of the case

1. On 15 September 2021, the player Mohamed Zakaria Boulahia and Emirates Club concluded an employment contract valid as from the date of signature until 31 May 2023.
2. Subsequently, the parties concluded a mutual termination agreement, according to which the club committed to pay to the player the amount of USD 150,000 net, as follows:
  - USD 15,000 on 1 September 2022;
  - USD 15,000 on 1 October 2022;
  - USD 15,000 on 1 November 2022;
  - USD 15,000 on 1 December 2022;
  - USD 15,000 on 5 January 2023;
  - USD 15,000 on 1 February 2023;
  - USD 15,000 on 1 March 2023;
  - USD 15,000 on 1 April 2023;
  - USD 15,000 on 1 May 2023;
  - USD 15,000 on 1 June 2023;
3. Art. 7 of the termination agreement stipulated the following:

*"7. The failure to pay any of the instalments agreed in within one week of the due dates entitles the player to claim all the remaining instalments and amounts in dente, plus interests at 5% rate since the due dates until effective payment, plus 20% of the total amounts in dente as penalty clause."*
4. On 8 June 2023, the player sent a default notice to the club, requesting the payment of USD 45,000 within 10 days.
5. On 9 June 2023, the club paid AED 55,200 (approx. USD 15,000).
6. On 19 June 2023, the player sent another default notice, requesting the payment of USD 29,944 within 10 days.

## II. Proceedings before FIFA

7. On 29 June 2023, the player lodged a claim before the FIFA Football Tribunal for outstanding remuneration and requested the payment of USD 29,944 arising from the mutual termination agreement, plus 5% interest p.a. as from 1 June 2023.
8. The Claimant argued that the club had the following debt towards him:
  - 15.000 USD due on 01/06/2023;
  - 30.000 USD as a penalty clause of 20% of the total amount in debt;Total: USD 45,000
9. In its reply, the club rejected the player's claim.
10. The club explained that it paid USD 135,000 without delay, but acknowledged that a last payment was not paid on time due to internal bank procedures, but not due to a lack of funds or bad faith.
11. The club rejected the payment of any additional penalty and argued that the claimant failed to prove substantial damage caused by the one-day payment delay.
12. The club explained that it paid the last instalment on 9 June 2023 (cf. exhibit 6 of the reply).
13. In his replica, the Claimant insisted in the payment of USD 29,944 plus 5% interest p.a. as from 1 June 2023.
14. The Claimant observed that the club "*confesses that the payment of the last instalment in the amount of 15.000 USD, was only made on 9 June 2023*", which "*means that confesses the breaching of the Termination Agreement signed between the parties*".
15. In its *duplica*, the Respondent confirmed its previous position.

### III. Considerations of the Dispute Resolution Chamber

#### a. Competence and applicable legal framework

1. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *Judge*) analysed whether he was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 15 February 2023 and submitted for decision on 27 September 2023. Taking into account the wording of art. 34 of the October 2022 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.
2. Subsequently, the Single Judge 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 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 an Algerian player and an Emirati club.
3. Subsequently, the Single Judge 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 28 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

4. 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

5. Its competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the 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**

6. The Judge first noted that the matter at stake concerns outstanding remuneration arising from a settlement agreement concluded between the parties.
7. In particular, the Judge noted that the Claimant requested the payment of USD 45,000, corresponding to the last instalment of the settlement agreement (USD 15,000), as well as to a penalty that is equivalent to 20% of the total value of the agreement (20% of 150,000, i.e. USD 30,000).
8. In this respect, the Respondent acknowledged that it paid the last instalment with delay, on 9 June 2023, whereas it was due on 1 June 2023.
9. Therefore, as first consideration, the Judge understood that the principal amount was settled and no amount can be awarded in this regard.
10. However, given the delay in the payment, the Judge, in accordance with the longstanding jurisprudence of the Football Tribunal, established that the player should receive 5% interest p.a. over the principal amount of USD 15,000 from 1 June 2023 until 9 June 2023.
11. In addition, the Judge noted that the contract stipulated the following:  
  
*“7. The failure to pay any of the instalments agreed in within one week of the due dates entitles the player to claim all the remaining instalments and amounts in dente, plus interests at 5% rate since the due dates until effective payment, plus 20% of the total amounts in dente as penalty clause.”*
12. In relation to said clause, given the payment with delay in the payment of the principle amount, the Judge considered that it is fully applicable.
13. Indeed, the Judge considered that the penalty clause in the termination agreement is a valid and enforceable contract term. It is clear and unambiguous, and it sets out the specific consequences of a delay in payment. The parties agreed to the clause when they entered into the contract, and they are both bound by it.
14. As a result, in strict compliance with the principle of *pacta sunt servanda*, the Judge established that the Respondent shall pay to the Claimant, the total amount of USD 30,000 (20% of 150,000, i.e. USD 30,000), as agreed in the contract.

#### **ii. Compliance with monetary decisions**

15. Finally, taking into account the applicable Regulations, the 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.
16. In this regard, the 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.
17. Therefore, bearing in mind the above, the 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.
18. The Judge shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form.
19. The 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**

20. The 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 Judge decided that no procedural costs were to be imposed on the parties.
21. Likewise, and for the sake of completeness, the 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.
22. Lastly, the 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, Mohamed Zakaria, is partially accepted.
2. The Respondent, Emirates, must pay to the Claimant the following amounts:
  - **5% interest** *p.a.* over the amount of USD 15,000 as from 1 June 2023 until 9 June 2023;
  - **USD 30,000 as contractual penalty.**
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 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

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**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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