TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2022/A/9135 KAA Gent v. Roman Yaremchuk

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Fabio **Iudica**, Attorney-at-Law in Milan, Italy

in the arbitration between

KAA Gent, Belgium

- Appellant -

and

Roman Yaremchuk, Ukraine

Represented by Mr Andrii Kharytonchuk, Attorney-at-Law in Valencia, Spain

- Respondent -

I. THE PARTIES

1. KAA Gent (the "Appellant" or the "Club") is a professional football club based in Gent, Belgium, competing in the Belgian Pro League. It is affiliated to the Royal Belgian Football Association ("RBFA") that in turn is affiliated to the *Fédération International de Football Association* ("FIFA").

2. Mr Roman Yaremchuk (the "Respondent" or the "Player"), born on 27 November 1995 in Lviv, Ukraine, is a professional football player of Ukrainian nationality.

3. The Appellant and the Respondent are jointly referred to as the "Parties".

II. INTRODUCTION

4. This appeal is brought by the Club against the decision taken by the Dispute Resolution Chamber (the "DRC") of FIFA on 23 June 2022 (the "Appealed Decision"), *vis-à-vis* the Player, regarding an employment-related dispute.

III. FACTUAL BACKGROUND AND PROCEEDINGS BEFORE THE FIFA DRC

5. Below is a summary of the main relevant facts, as established based on the written submissions of the Parties, and relevant documentation produced in this arbitration proceeding. Additional facts may be set out, where relevant, in connection with the legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

A. BACKGROUND FACTS

6. The Player was first employed by the Club in 2017.

7. On 6 October 2020, the Club and the Player signed a new employment contract to be valid from the date of signing until 30 June 2025 (the "Employment Contract"). The Employment Contract replaced/renewed the pre-existing employment agreement between the Parties.

8. As the Employment Contract was originally drafted in Dutch, the relevant facts in the following summary which are based on the Employment Contract, are drawn from the English translation provided by the Club which is not contested by the Player.

9. According to Article 10 of the Employment Contract, the Player's remuneration consisted of a fixed salary, several bonuses and other contractual benefits.

10. Pursuant to Article 11(1) of the Employment Contract, the Club undertook to pay to the Player a fixed monthly salary of EUR 17,000 gross as well as holiday pay. In addition, according to Article 11(2), (3) and (4) of the Employment Contract, the Player was also entitled to receive further contingent payments corresponding to team and individual bonuses and other benefits among which it was provided as follows: "*The club makes a*

company car available to the player of the type Hyundai Tucson or equivalent. The lease is fully borne by the club. The player pays the traffic fines, as well as the part of damage caused that is not covered by the insurance".

11. Furthermore, in accordance with Article 11(5) of the Employment Contract, and based on the applicable regulations of the Belgian Pro League, the Club was also obliged to pay a contribution into a group insurance (covering the Club's employees) in favor of the Player (the "Patron's Contributions").

12. Under Article 11(6) of the Employment Contract, the Parties stipulated that the Player was entitled to a minimum guaranteed remuneration for each sporting season, as follows:

"*The Club guarantees to the player a total net minimum salary of 1.000.000 EUR (one-million) for each season he is on the payroll of the club. If the player is not on the club's* [sic] *payroll during the entire season, the minimum guarantee will be pro-rated according to the number of months effectively on the club's* [sic] *payroll. If the player is injured for more than 1 month, the minimum guarantee does not apply from the second month, until the date of resumption.*

For the calculation of the income received and for the attainment of the minimum salary, all possible compensations and benefits that the player enjoys during the season are taken into consideration, with the exception of contributions to the group insurance. This includes (without being exhaustive) the gross monthly salary, holiday pay, benefits in kind (at their real cost), all possible monthly premiums (match premium, start premium, double or triple premiums at the discretion of the chairman, European premiums, qualification premiums, classification premiums,...), signing premiums and the like.

The final settlement will be made on June 30 of each season and if the player does not meet the predetermined minimum, the balance will be paid by July 15 at the latest".

13. Before the signing of the Employment Contract and during the term of the previous employment contract, the Parties had already entered into an agreement in relation to the use of a company car (the "Ancillary Agreement") according to which on 15 July 2020, the Player was provided a Hyundai Tucson (license plate 1-YAN-293) leased by the Club. Based on the Ancillary Agreement, the fuel costs of the company car would be at the Player's expenses.

14. Article 5 of the Ancillary Agreement also provided the following: "*This agreement is concluded in execution of the employment contract and other possible addendums concluded between the employee and the club. The use of a company car is a benefit in kind belonging to the salary, on which the employee is taxed. This benefit will therefore be included in the salary calculations as its legally determined value and withholding tax will be deducted from this*".

15. In addition, the following was agreed between the Parties under Article 7 of the Ancillary Agreement: "*The employee is obliged to follow the applicable traffic legislation. The employee is personally responsible for any traffic violations and the resulting fines and/or prosecutions. Under no circumstance does the club take responsibility for possible prosecution for traffic offence. Fines imposed as a result of the use of the company*

car and non-compliance with traffic regulations are at all time borne by the employee. If these fines are advanced by the employer, they will be recovered from the wages and/or financial benefits granted to the employee. Administrative costs amounting to EUR 12.5 per violation will be charged for paying, withholding and processing any fines. Copies of the traffic fines paid and withheld by the club will be added to the employee's pay slip for the month in which the fine was withheld, so that the employee is clearly informed and can object if necessary. If the employee does not respond within 3 months, he is deemed to agree".

16. In August 2021, the Player was transferred to the Portuguese Club Benfica on a definitive basis and, as a result, the Employment Contract was mutually terminated between the Parties on 31 July 2021. However, the Parties failed to reach a formal agreement on the early termination of the Employment Contract since they disagreed on the relevant financial terms.

17. In fact, the Player refused to accept the proposal submitted by the Club which provided for the payment of an overall amount of EUR 90,462,80 in settlement of the Club's debts or obligations towards the Player.

18. On 17 November 2021, the Player sent a letter of formal warning to the Club whereby he requested payment of the outstanding amount of EUR 103,918,83 net corresponding to the balance due for the sporting season 2020/2021 against the minimum guaranteed salary of EUR 1,000,000, as well as EUR 70,343,75 net as balance due of the *pro-rata* payment of the minimum guaranteed salary for the sporting season 2021/2022, amounting to a total of EUR 174,262,58.

19. The Club failed to pay to the Player the requested amount.

B. PROCEEDINGS BEFORE THE FIFA DRC

20. On 28 January 2022, the Player lodged a claim against the Club before the DRC requesting to be awarded outstanding remuneration for the sporting seasons 2020/2021 (EUR 103,918.83) and 2021/2022 (EUR 70,343.75), in the total amount of EUR 174,262.58 plus 5% interest *p.a*.

21. In its reply before the FIFA DRC, the Club argued that the amount requested as outstanding remuneration was excessive.

22. With regard to the sporting season 2020/2021, the Club maintained that the Player enjoyed several benefits under the Employment Contract that should be taken into account for the purpose of calculating the minimum guaranteed salary. In addition, the Club incurred some extra costs occasioned by the Player, such as traffic fines and car damages connected with the company car, that should also be deducted from the Player's receivables. According to the Club, the following sums had to be set-off against the guaranteed minimum salary for the season 2020/2021:

- Salaries and bonuses already paid and not in dispute: EUR 896,081.17;
- Lease fees Hyundai Tucson EUR 9,000.00;
- Fines+ Administrative costs EUR 756.00;
- Damages to car EUR 8,189.17;

- Mental coach/counselling on request of the Player EUR 43,017.60; and
- Other costs EUR 146.75.

23. As to the amount of EUR 70,343.75 corresponding to the remuneration due for the sporting season 2021/2022, the Club submitted that the Player was not entitled to receive the minimum guaranteed salary on a *pro rata* basis due to his absence from training and failure to comply with his main obligations towards the Club during the month of July 2021.

24. Moreover, in accordance with Article 11(6) of the Employment Contract the final settlement of the amount due for the sporting season 2021/2022 was still not due when the Player's claim was lodged before the DCR.

25. On 23 June 2022, the DRC issued the Appealed Decision whose operative part reads as follows:

"*1. The claim of the Claimant, Roman Yaremchuk, is accepted.*

2. The Respondent, K.A.A. GENT, has to pay to the Claimant, the amount of EUR 174,262.58 as outstanding remuneration plus 5% interest p.a. as from the respective due dates until the date of effective payment as follows:

- on the amount of EUR 70,343.75 as from 1 August 2021;

- on the amount of EUR 103,918.83 as from 28 January 2022.

3. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

4. 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.

5. 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.

6. This decision is rendered without costs".

IV. GROUNDS OF THE APPEALED DECISION

26. The grounds of the Appealed Decision were notified to the Parties on 19 August 2022. They can be summarized as follows:

27. Firstly, the DRC considered that, in principle, it was competent to deal with the present dispute with respect to the claim filed by the Player on 28 January 2022, based on the provision of Article 23(1), in combination with Article 22 lit. b. of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), and that, the August 2021 edition of the aforementioned regulations was applicable to the substance of the matter.

28. As to the merits, the DRC acknowledged that the present dispute concerns the payment of the Player's outstanding remuneration relating to the sporting season 2021/2021 and for the month of July 2021.

29. In respect to the Club's allegation that it was entitled to deduct certain amounts from the Player's salary as "*benefit in kind*" (car lease fees, traffic fines, damages to the company car, mental training program on request of the Player, miscellaneous costs), the DRC held that the Employment Contract "*did not contain any reference to a possible deduction of the said amounts from the salary of the Claimant*". In fact, the Chamber observed that Article 11(5) of the Employment Contract specifically mentions that benefits in kind are not included in the "*established remuneration*" of the Player. On the other hand, while Article 11(6) of the Employment Contract provides that the Player is entitled to a minimum guaranteed salary of EUR 1,000,000 indicating that certain compensation and benefits are included as minimum income, "*there is not an express provision which could indicate that the benefit in kind as highlighted by the Respondent forms part of or should be considered as the said minimum guaranteed income of the Claimant*".

30. Therefore, the DRC considered that there is no legal basis in the Employment Contract that could justify a deduction of the amounts as indicated by the Club from the outstanding remuneration of the Player.

31. In addition, while Article 11(4) stipulates that the Player will pay fines for traffic violations committed with the company car, the provision does not entitle the Club to set-off the relevant amounts against the Player's salary. In addition, the documentation provided by the Club in relation to traffic fines and damages was not taken into account because of the following reasons:

    a) they were not accompanied by translation in any of FIFA's official languages;
    b) a clear link cannot be established between the damaged vehicle and the Player since the damages report relates to a Mercedes Benz vehicle and not to a Hyundai;
    c) the damage claimed by the Club seems to date back to a period prior to the commencement of the Employment Contract.

32. Moreover, the Club's request to deduct the costs of therapy sessions was denied based on the fact that, according to the documentation on file, "*the agreement regarding the mental coaching was established between the Respondent and the said provider which service was offered to the Claimant*".

33. As a consequence of the arguments above, the DRC held that the amounts referred to by the Club as "benefit in kind" cannot be deducted from the outstanding remuneration due to the Player for the 2020/2021 sporting season.

34. Referring to the the sporting season 2021/2022, the DRC noted that although the amount of the *pro-rata* salary for July 2021 was not in dispute, the Club maintained that the Player was not entitled to it due to his unjustified absence from training. However, the DRC remarked that the Club failed to provide evidence in support of such allegation which was therefore rejected.

35. Finally, the DRC concluded that based on the principle of *pacta sunt servanda*, the Club was liable to pay to the Player the total amount of EUR 174,262.58 as outstanding remuneration under the Employment Contract as well as 5% interest *p.a.*

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. On 5 September 2022, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision in accordance with Articles R47 et seq. of the Code of Sports-related Arbitration, Edition 2021, (the "Code"). In its Statement of Appeal, the Appellant requested that the present case be submitted to a sole arbitrator and chose English as the language of the proceedings.

37. On 19 September 2022, the Respondent informed the CAS Court Office that he agreed with the appointment of a sole arbitrator and the language of the proceedings. Moreover, he requested that, pursuant to Article R55(3) of the Code, the time limit for filing his Answer, be fixed after the payment by the Appellant of its share of the advance of costs.

38. On the same date, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

39. On 23 September 2022, FIFA informed the CAS Court Office that it renounces its right to intervene in these proceedings.

40. On 2 November 2022, the Respondent requested a 10-day extension of the time limit to file his Answer which was granted in accordance with Article 32(2) of the Code.

41. On 11 November 2022, the Respondent filed his Answer in accordance with Article R55 of the Code.

42. On 15 November 2022, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the arbitral tribunal appointed to decide the present case was constituted as follows:

    Sole Arbitrator: Mr Fabio Iudica, Attorney-at-law in Milan, Italy.

43. On 23 November 2022, the CAS Court Office forwarded the Order of Procedure to the Parties each of which returned a duly signed copy to the CAS Court Office. The Parties

were also informed that the Sole Arbitrator, following consultation with them, had decided to render an award in these proceedings based solely on the Parties' written submissions.

VI. SUBMISSIONS OF THE PARTIES AND RESPECTIVE PRAYERS FOR RELIEF

44. The following outline is a summary of the Parties' arguments and submissions which the Sole Arbitrator considers relevant to decide the present dispute and does not comprise each and every contention advanced by the Parties. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in this summary. The Parties' written submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Appellant's Submissions and Requests for Relief

45. The Appellant's submissions in its Statement of Appeal and in its Appeal Brief, may be summarized as follows:

46. The amount awarded to the Player by the Appealed Decision is unwarranted.

47. With regard to the sporting season 2020/2021, the balance of EUR 103,918.83 claimed by the Player against the minimum guaranteed salary should be reduced because the DRC failed to take into account several benefits that the Player enjoyed under the Employment Contract that need to be considered as part of the remuneration received by the Player for the purpose of attaining the minimum guarantee.

48. Such benefits consist in certain amounts that were borne or paid in advance by the Club on behalf of the Player in connection with the company car (*i.e.*, EUR 17,912.80) and the psychological assistance provided to the Player (*i.e.*, EUR 43,017.60) amounting to a total of EUR 60,930.40, which should be set-off against the Club's outstanding debt towards the Player.

49. The car-related costs are broken down as follows:

- Lease costs EUR 9,205.65 (corresponding to approximately EUR 675/month+21% TVA);
- EUR 518.00 traffic fines;
- EUR 1,056.25 damages to the Hyundai vehicle;
- EUR 7,132.90 damages to the Mercedes Benz vehicle.

50. Therefore, the amount of EUR 174,262.58 established by the DRC is excessive and should be reduced to EUR 113,332.18.

51. Notwithstanding the above, in order to avoid the increasing of the interests on the amounts awarded in the Appealed Decision, on 5 September 2022, the Club made a partial payment to the Player in the amount of EUR 155,447.43, reserving all rights and without any acknowledgement of liability.

52. By filing the present appeal, the Club requests the CAS to establish that the correct outstanding remuneration due the Player amounts to EUR 113.332.18 (and not to EUR 174,262.58). Considering that the Club has already made a payment of EUR 155,447.43, the Player should therefore reimburse the Club of the exceeding amount of EUR 42,115.25.

53. According to the Employment Contract, the use of the company car granted to the Player corresponds to a "benefit in kind", whose "real cost" needs to be considered in composing the minimum guaranteed salary under Article 11(6) of the Employment Contract.

54. In the Appealed Decision, the DRC wrongly referred to Article 11(5) of the Employment Contract to exclude any assessment of the "benefits in kind", since the relevant provision only determines which components of the salary need to be taken into account for the purpose of calculating the Patron's Contributions. On the contrary, the said provision has no relevance at all for the calculation of the minimum guaranteed remuneration of EUR 1,000,000 which conversely is established on the basis of Article 11(6) of the Employment Contract where "benefits in kind" are expressly mentioned as components of the minimum guarantee. In addition, although indirectly, by excluding benefits in kind for the purpose of calculating the Patron's Contributions, Article 11(5) of the Employment Contract confirms at the same time that such benefits are considered "salary components".

55. The DRC completely disregarded the content of Article 11(6) of the Employment Contract and wrongly decided to not take into account the value of the use of the company car in the calculation of the minimum guaranteed salary.

56. In order to assess the value of the company car offered to the Player, "the real lease price" paid by the Club for that company car should be taken into account. In this respect, according to Ancillary Agreement, the company car, a Hyundai Tucson (license plate 1-YAN-293), was made available to the Player from 15 July 2020 until 15 July 2021, for 12 months, based on a previous sponsorship agreement concluded by the Club with Hyundai Belux whereby it is established that the value of a Hyundai Tucson was EUR 675+VAT. For the relevant period during which the car was at the Player's disposal, the Club paid a total lease fee of EUR 9,801 included VAT. However, due to partial VAT recovery, the final cost for the Club amounts to EUR 9,205,65 which should be considered as the "real cost" of the relevant benefit in kind in view of the calculation of the Player's minimum guaranteed salary in accordance with Article 11(6) of the Employment Contract. The fact that the lease costs are borne by the Club does not mean that they should not be evaluated as a component of the salary received by the Player.

57. As to traffic fines and car damages, Article 11(4) and (6) of the Employment Contract provides that they are borne by the Player. The payment of the fines is formally executed by the Club and then deducted from the Player's pay slips. The total amount which should be deducted from the outstanding amounts due to the Player is EUR 518,00.

58. The same applies to the costs of car damages which have been caused by the Player. In this regard, the Player caused damages to the company car at his disposal in two occasions: a) while he was using the Hyundai Tucson, for an amount of EUR 1,056.25; b) while he was using the Mercedes Benz, for an amount of EUR 7,132,90. The latter vehicle has been used by the Player as company car before the Hyundai Tucson.

59. Finally, the costs incurred by the Club in order to provide psychological assistance to the Player for a total amount of EUR 43,017.60 have also to be considered as a benefit in kind and deducted from the outstanding salary. In fact, such mental coaching was an extra service requested by the Player that cannot be qualified as a standard service generally offered by clubs to their players. The Club offered a customized program specifically designed for the Player with an individual external therapist, Dr D'Hoore (who was not a member of the Club's medical staff) who was exclusively in charge to assist the Player. Such program consisted of "*observations of the behavior of the Player during matches and individual performance assessments and evaluation conversations. This is absolutely no standard service that the team offer for every player, nor did the psychologist ever worked in group sessions. It was a very intense and purely individual coaching program*". These services "*were external and extraordinary, supplementary services, in every sense, a benefit that the Player enjoyed to make him a better football player and competitor*".

60. Although the Club paid the relevant invoices for the Player's counselling, the corresponding value should be considered as a benefit enjoyed by the Player for the purpose of attaining the minimum guaranteed salary in accordance with Article 11(6) of the Employment Contract.

61. With regard to the Appellant's requests for relief, the Sole Arbitrator notes that the Statement of Appeal and the Appeal Brief slightly differ as to the referred amounts and therefore, the Sole Arbitrator deems that the Appeal Brief superseded the conclusions submitted in the Statement of Appeal and shall prevail. In this, the Sole Arbitrator feels comforted by the fact that the amounts indicated in the Conclusion in the Appeal Brief are those consistent with the Appellant's substantial allegations.

62. In the Conclusion submitted in its Appeal Brief, the Appellant requested the CAS to reduce the amount due to the Player for the season 2020/2021 by deduction of EUR 60,930.40, *i.e.*, from EUR 103,918.83 to EUR 42,988.43 (corresponding to the reduction of the grand total from EUR 174,262.58 to EUR 113,332.18). In addition, bearing in mind that on 5 September 2022 the Club paid a net amount of EUR 155,447.43 to the Player in order to stop interests from accruing, the Appellant also requested the CAS to condemn the Player to refund the exceeding amount of EUR 42,115.25.

B. The Respondent's Submissions and Requests for Relief

63. With regard to the issue whether the lease costs of the company car are to be considered a benefit in kind for the purpose of composing the minimum guaranteed salary, the provisions of Article 11(5) paragraph 3, Article 11(4) and (6) of the Employment Contract are controversial. Therefore, the Employment Contract needs further interpretation.

64. In this respect, CAS jurisprudence (consistent with Swiss jurisprudence) gives relevance to the common intention of the parties which must prevail over the wording of a contract.

65. Such common intention can be inferred from the Parties' behavior after the conclusion of the Employment Contract. In the present case, the Appellant's conduct is indicative as it never deducted any costs related to the lease of the car from the receivables of the Player as it can be seen in the Player's monthly pay slips produced by the Appellant.

Nor has the Club deducted any such costs at the end of the calendar year 2020 or at the end of the sporting season 2020/2021. On the contrary, the Club deducted income tax on leasing costs on a monthly basis from the Player's salaries, and the same applies to traffic fines.

66. According to the Respondent, such approach is consistent with the content of the Ancillary Agreement where it is expressly established that the Player will bear the relevant taxes, damages, cleaning costs and traffic fines, while, on the contrary, there is no mention at all of lease costs.

67. In addition, Article 11(4) of the Employment Contract is clear in stating that "*the lease is fully borne by the club*" which does not mean that, later on, the Club will be entitled to withdraw such costs from the Player's salary. This provision has to be interpreted according to the principle of confidence which implies that "*a party's declaration must be given the sense its counterparty can give to it in good faith*". Therefore, Article 11(4) of the Employment Contract must prevail over Article 11(6) of the Employment Contract.

68. In any case, the Club did not really incur in any "real costs" for the Hyundai vehicle since the car was leased from the Club's sponsor within the framework of a sponsorship agreement. Therefore, no deduction can be applied to the Player's remuneration in connection with the use of the company car.

69. Finally, the Club is now prevented from raising any claim in order to deduct leasing costs from the Player's remuneration based on the principle of *venire contra factum proprium* since this contradicts the previous approach of the Club with respect to lease costs which were never deducted from the Player's salary before the present dispute arose.

70. On the other hand, the Respondent did not object to the Appellant's claim with respect to traffic fines and acknowledged his debt towards the Club in the amount of EUR 518.00.

71. With respect to the claim for car damages in relation with the Hyundai Tucson, the Respondent argued that the payment by the Club of the relevant amount (*i.e.*, EUR 1,056.25) has not been demonstrated and in any case, Article 11(4) of the Employment Contract provides that the Player is liable only for damages which are not covered by insurance. Therefore, the Appellant did not discharge its burden of proof in relation to expenses due by the Player regarding the damage to the Hyundai vehicle, besides the fact that small damages included in the normal use of the car (such as those indicated in the invoice of the car repair provided by the Club) would not be at the Player's expense in accordance with the Ancillary Agreement.

72. As to the damages to the Mercedes Benz vehicle, the Appellant did not provide any new arguments in order to refute the reasonings in the Appealed Decision rejecting such claim. As a consequence, the amount of EUR 7,132.90 claimed by the Appellant cannot be considered within the calculation of the minimum guaranteed salary.

73. With regard to the costs for psychological assistance, the correspondence between the therapist and the Club demonstrates that the Club appointed Dr D'Hoore and engaged

his services. In addition, the fact that Dr D'Hoore is an external specialist is not in contradiction with Article 6 of the Employment Contract which provides for medical assistance free of charge for the Player. Moreover, psychological assistance cannot be considered as "benefit in kind". In any case, it results that the Club has never deducted fees paid to Dr D'Hoore from the Player's monthly salary. Finally, the Appellant did not provide any evidence of what is the standard package of services offered to its players in order to prove that the psychological assistance offered to the Player was an extraordinary service, beyond the contractual standard. Therefore, the Appellant's claim for deduction of the relevant costs for psychological therapy must be rejected.

74. In his "Statement of Defence", the Respondent submitted the following requests for relief:

"*1) All claims of the Appellant are dismissed except the claim for traffic fines of € 518.*

2) The Appellant shall bear the entire costs of this arbitration.

3) The Appellant shall contribute to the legal and other costs incurred by the Respondent in the amount of € 10'000."

VII. JURISDICTION

75. Article R47 of the Code provides – in its relevant parts – as follows:

"*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*."

76. Article 57(1) of FIFA Statutes (May 2022 edition) provides the following: "*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question*".

77. The jurisdiction of the CAS was not contested by the Respondent.

78. The signature of the Order of Procedure confirmed that the jurisdiction of the CAS in the present case was not disputed.

79. Accordingly, the Sole Arbitrator is satisfied that CAS has jurisdiction to hear the present case.

VIII. ADMISSIBILITY

80. Article R49 of the Code, *inter alia*, provides the following:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*"

81. According to Article 57(1) of FIFA Statutes (May 2022 edition), the time limit to file an appeal to the CAS shall be 21 days of receipt of the decision in question.

82. The Sole Arbitrator notes that the Appealed Decision was rendered on 23 June 2022 and notified to the Parties with grounds on 19 August 2022. Considering that the Appellant filed its Statement of Appeal on 5 September 2022, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Sole Arbitrator is satisfied that the present appeal was filed in timely manner.

83. The admissibility of the appeal is not disputed by the Respondent.

84. Accordingly, the Sole Arbitrator is satisfied that the appeal is admissible.

IX. APPLICABLE LAW

85. Article R58 of the Code provides the following:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*."

86. Moreover, Article 56(2) of the FIFA Statutes provides the following:

"*The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*."

87. The Respondent makes reference to Article 23 of the Employment Contract according to which the contract is subject to Belgian employment law and employment collective agreements. On the other hand, the Respondent refers to FIFA regulations and Swiss law as the law applicable to the present case.

88. According to CAS jurisprudence, "*It follows from Article R58 of the CAS Code that the 'applicable regulations', i.e. the statutes and regulations of the sports organisation that issued the appealed decision are applicable to the dispute irrespective of what law the parties have agreed upon. The parties cannot derogate from this provision if they want their dispute to be decided by the CAS. Article R58 of the CAS Code takes precedence over conflicting aspects of direct choice-of-law clauses and thus in casu the FIFA rules and regulations apply primarily*" (CAS 2017/A/5374).

89. In consideration of the above and pursuant to Article R58 of the CAS Code, the Sole Arbitrator holds that the present dispute shall be decided principally according to the FIFA RSTP. The Sole Arbitrator will therefore apply Swiss law for the interpretation and

construction of the respective FIFA regulations. In a second step, and subsidiarily, only for questions not covered by the FIFA regulations, and if needed, the Sole Arbitrator shall consider Belgian law insofar as the Appellant has cooperated with the Sole Arbitrator in ascertaining the relevant content of the law applicable to the merits (see CAS 2017/A/5111).

X. MERITS

90. The Parties are in dispute with respect to the amounts due to the Player for the sporting season 2020/2021 under the Employment Contract. The Sole Arbitrator notes that in the present appeal, the Appellant did not repeat the claim brought before the DRC regarding the *pro-rata* payment for the month of July 2021 in relation to the sporting season 2021/2022. As a consequence, the Appealed Decision has remained unchallenged with respect to the amount of EUR 70,343.75 due to the Player, corresponding to the share of the minimum guaranteed salary for the month of July 2021. Consequently, this amount remained undisputed.

91. The Parties agreed that for the season 2020/2021, the Player received a total amount of EUR 896,081.17, including salary and bonuses. The Player submits that he is entitled to receive a further amount of EUR 103,918.83 corresponding to the balance of the minimum guaranteed salary of EUR 1,000,000 provided under Article 11(6) of the Employment Contract. On the other side, the Appellant argues that only EUR 42,988.43 is outstanding, resulting from the set-off of the benefits enjoyed by the Player, corresponding to an amount of EUR 60,930.40. Therefore, according to the Appellant, the total amount due to the Player, including the *pro-rata* payment for the month of July 2021 corresponds to EUR 113,332.18 (*i.e.*, EUR 70,343.75 + EUR 42,988.43). The Appellant further claims that, having already paid the amount of EUR 155,447.43 to the Player in partial compliance with the Appealed Decision in order to avoid increasing of interests, the CAS should order the Player to refund the Club with EUR 42,115.25 (*i.e.*, EUR 155,447.43 – EUR 113,332.18). The relevant payment allegedly made by the Club in the amount of EUR 155,447.43 was not disputed by the Respondent.

92. The Respondent submits that the Appellant is not allowed to deduct any amounts relating to the lease costs of the company car, the car damages and the psychological assistance, since the Employment Contract establishes that such costs are fully borne by the Club. Alternatively, assuming that the relevant provisions in the Employment Contract are contradictory or not clear in establishing whether such costs should be considered as part of the minimum guaranteed salary, they should be interpreted in the negative, in accordance with the principle of good faith, according to the common intention of the Parties and the principle of estoppel. On the other hand, the Respondent acknowledges that he is responsible for the amount of EUR 518,00 corresponding to traffic fines connected with the use of the company car, and therefore he accepts that the relevant amount be deducted from the amount granted in the Appealed Decision.

93. In view of the position of the Parties, the main issue to be resolved by the Sole Arbitrator is whether the amounts regarding the car lease costs, the car damages and the psychological assistance can be taken into account as being part of the minimum guaranteed salary in accordance with the Employment Agreement and, therefore, if these costs should be deducted from the amount granted under the Appealed Decision.

94. With respect to Appellant's claim regarding the use of the company car, the Sole Arbitrator first observes that, in principle, the Parties do not dispute that such use corresponds to a "benefit in kind" within the meaning set forth under the Employment Contract.

95. What is, however, disputed between the Parties is whether the "value" of such benefit contributes to the formation of the minimum guaranteed salary and to what extent, if any. In this regard, the Sole Arbitrator refers to Article 5 of the Ancillary Agreement whereby the following is established: "*This agreement is concluded in execution of the employment contract and other possible addendum concluded between the employee and the club. The use of a company car is a benefit in kind belonging to the salary, on which the employee is taxed. This benefit will therefore be included in the salary calculations as its legally determined value and withholding tax will be deducted from this*".

96. The Sole Arbitrator is satisfied that the abovementioned provision is sufficiently clear in establishing that the use of the company car is a benefit in kind whose value is to be considered as part of the Player's salary.

97. This is confirmed by Article 11(6) of the Employment Contract which establishes the Player's right to receive a minimum guaranteed salary and in the relevant part reads as follows:

"*For the calculation of the income received and for the attainment of the minimum salary, all possible compensations and benefits that the player enjoys during the season are taken into consideration, with exception of contributions to the group insurance. This includes (without being exhaustive) the gross monthly salary, holiday pay, benefits in kind (at their real cost), all possible monthly premiums (match premium, start premium, double or triple premiums at the discretion of the chairman, European premiums, qualification premiums, classification premiums…), signing premiums and the like*".

98. The same considerations derive in the light of Article 10 paragraph 1 of the Employment Contract ("*The Club pays the Player a remuneration which consists of a fixed salary, several bonuses and other contractual perks*") which also establishes that tax deductions are withheld from the fixed salary, bonuses and benefits as well.

99. In view of the above, the Sole Arbitrator disagrees with the reasoning of the DRC in the Appealed Decision that "*there is not an expressed provision which could indicate that the benefit in kind as highlighted by the Respondent* [the Club] *forms part of or should be considered as the said minimum guaranteed income of the Claimant*" (Appealed Decision, paragraph 40). In this respect, the Sole Arbitrator observes that Article 11(5) of the Employment Contract, on which said reasoning is based, takes into consideration only the fixed salary and the team bonuses (the "referential remuneration"), for the purpose of calculating the amount of the Patron's Contributions payable by the Club. Such figure does not include benefits in kind, nor holiday pay and other contractual benefits and is substantially different from the minimum guaranteed salary to which the Player is entitled under Article 11(6) of the Employment Contract. Therefore, the Sole Arbitrator believes that the Appealed Decision needs to be amended accordingly.

100. Being established that the company car is a benefit in kind to be considered as part of the Player's minimum guaranteed remuneration, the Sole Arbitrator now turns his attention to the "real cost" which shall be considered in order to assess the value of such benefit in view of the calculation of the Player's remuneration. In this respect, the Appellant relies on the sponsorship agreement signed with Hyundai Belux which establishes that the monthly leasing price for the Hyundai Tucson at the Player's disposal amounted to EUR 675,00. The Sole Arbitrator believes that, irrespective of the financial terms of the sponsorship agreement between the Club and Hyundai Belux (and irrespective of any possible reciprocal offset of the consideration amounts between them), the specified amount is a reliable indication of the real value of the benefit in question.

101. Moreover, the fact that Article 11(4) of the Employment Contract provides that the lease cost is fully borne by the Club is not in contradiction with the rule under Article 11(6) of the Employment Contract, which in fact stipulates that the benefit enjoyed by the Player must be appraised in its objective value when assessing the remuneration received by the Player for the attainment of the minimum guarantee. Finally, the Respondent's allegation that the Club has never deducted any amount from the Player's salary in relation to lease costs of the company car is undemonstrated as it is merely based on one monthly pay slip provided by the Club with its Appeal Brief (incidentally, the Sole Arbitrator notes that the relevant pay slip is only partially translated and therefore there is no certainty as to the Respondent's allegation regarding the lease costs). Nor did the Respondent provide any evidence that the Parties had reached any agreement contrary to what was stipulated under Article 11(6) of the Employment Agreement in order to exclude the value of the company car from the calculation of the minimum guaranteed salary.

102. Therefore, the Respondent's arguments in this respect are rejected and the Sole Arbitrator decides that the lease costs of the company car shall be taken into account in the calculation of the outstanding salary due to the Player. As a consequence, the amount of EUR 9,205.65 (including non-recoverable VAT) is detracted from the amount granted in the Appealed Decision.

103. Turning his attention to the car damages claimed by the Club, the Sole Arbitrator finds that the Appellant has failed to meet its burden of proving that it was entitled to recover such amounts from the Player, based on the condition required under Article 11(4) of the Employment Contract which stipulates that "[t]*he player pays the traffic fines, as well as the part of the damage caused that is not covered by the insurance*". As a consequence, the Appellant's request cannot be upheld. Moreover, the Sole Arbitrator agrees with the DRC in the Appealed Decision that the Appellant also failed to establish any clear and direct link between the Player and the alleged damages occurred to the Mercedes Benz vehicle.

104. With regard to the costs incurred by the Club for psychological assistance provided to the Player, the Sole Arbitrator rejects the Appellant's argument that such services should be regarded as a benefit in kind within the context and for the purpose of Article 11(6) of the Employment Agreement. The Sole Arbitrator believes that the counselling provided by Dr D'Hoore, specialist hired by the Club, are included in the medical assistance, free of charge, to which the Player was entitled under the provision of Article 6 of the Employment Contract, which also provides for the services of external specialists appointed by the Club, as in the present case. As a consequence, the costs for mental

coaching in the amount of EUR 43,017.60 are not to be deducted from the outstanding amount awarded in the Appealed Decision.

105. In conclusion, the Sole Arbitrator holds that the total amount of EUR 103,918.83 granted by the DRC to the Player in relation to the sporting season 2020/2021 shall be decreased by EUR 9,723.65 (EUR 518.00 for traffic fines + EUR 9,205.65 including non-recoverable VAT, as benefit in kind in relation to the use of the company car). Therefore, the Appealed Decision is partially amended accordingly.

106. Any other issue and all other motions or prayers for relief are dismissed.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 5 September 2022 by KAA Gent against the decision of the FIFA Dispute Resolution Chamber dated 23 June 2022 is partially upheld.

2. The decision rendered by the FIFA Dispute Resolution Chamber dated 23 June 2022 is amended in no. 2 of its operative part as follows:

   The Respondent, KAA Gent, has to pay to the Claimant Mr Roman Yaremchuk, the amount of EUR 164,538.93 as outstanding remuneration plus 5% interest *p.a.* as from the respective due dates of effective payment as follows:

   - on the amount of EUR 70,343.75 as from 1 August 2021;

   - on the amount of EUR 94,195.18 as from 28 January 2022.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 9 November 2023

THE COURT OF ARBITRATION FOR SPORT

Fabio Iudica
Sole Arbitrator