

Decision of the Dispute Resolution Chamber

passed on 12 October 2023

regarding an employment-related dispute concerning
the player **Erick Flores Bonfim**

COMPOSITION:

Clifford J. HENDEL (USA & France), Deputy Chairperson
Alejandro ATILIO TARABORELLI (Argentina), member
Michele COLUCCI (Italy), member

CLAIMANT:

Erick Flores Bonfim, Brazil
Represented by Wallace Joacir Alves de Oliveira

RESPONDENT:

Flamurtari FC, Albania

I. Facts of the case

1. The parties to the dispute are:
 - The Brazilian player, Erick Flores Bonfim (hereinafter: *the Claimant* or *the player*); and
 - The Albanian club, Flamurtari FC (hereinafter: *the Respondent* or *the club*).
2. On 18 August 2022, the Respondent sent an “official offer” for the employment of the player (hereinafter: ***the offer***) valid for the 2022/2023 season.
3. In accordance with the offer, the player would be entitled to the following amounts:
 - A monthly net salary of EUR 2,500.
 - A signature bonus of EUR 25,000.
4. In accordance with the offer, the player would be entitled to accommodation and food.
5. The offer also contained a handwritten counterproposal of the player with regards to the signature bonus, according to which the player proposed EUR 30,000 for the mentioned bonus.
6. As per the document titled “**pre-contract**” and dated 23 August 2022, the Claimant would be entitled to a monthly net salary of EUR 2,000, a signing bonus of EUR 30,000 and accommodation and food. The specimen of the pre-contract on file contained the signature of the player. However, it did not contain the club’s signature.
7. In accordance with the information retrieved from the Transfer Matching System (TMS), on 25 August 2022, the Claimant and the Respondent concluded an employment contract (hereinafter: ***the contract***) valid for the 2022/2023 season. The Claimant also provided a copy of this document, which was not dated; however, he mentioned in its claim that it was signed on 25 August 2022.
8. According to clause 3 of the contract, the Respondent undertook to pay the Claimant a monthly net salary of EUR 2,000 and provide accommodation and food for the duration of the contract.
9. Between August 2022 and December 2022, the player and the club’s manager (hereinafter: *the Manager*), held, *inter alia*, via the application WhatsApp, the following discussions:
 - On 22 August 2022 (quoted *verbatim*):

[...]

[22/08/2022 13:52:25] [the Manager] : *Only for the moment the team stay together till 20 of September*

[22/08/2022 13:52:57] [the Manager] : *We do your ticket now and for your family after 20 when you have your house*

[22/08/2022 13:52:59] [the Manager] : *It's ok*

[22/08/2022 13:55:30] [the player] : *the problem is my family traveling alone, i have 3 small children*

[22/08/2022 13:55:46] [the Manager]: *3*

[22/08/2022 13:55:50] [the Manager] : *Very good*

[22/08/2022 13:56:03] [the Manager] : *I understand*

[22/08/2022 13:56:16] [the Manager] : *But we have 2 problems*

[22/08/2022 13:56:20] [the Manager] : *First*

[22/08/2022 13:56:40] [the Manager] : *Vlora(Flamurtari city)*

[22/08/2022 13:57:08] [the Manager] : *It's summer city and all the good houses are busy*

[22/08/2022 13:57:26] [the Manager] : *Second*

[22/08/2022 13:58:08] [the Manager] : *If you fly now your travel with the child maybe go little longer*

[22/08/2022 13:59:14] [the Manager]: *Because it's very but very difficult with one stop way*

[22/08/2022 13:59:51] [the Manager]: *You need to go with your child more time*

[22/08/2022 14:00:40] [the Manager] : *If they come after 20 September you have the house ready and the travel of your family should be more short*

[22/08/2022 14:00:54] [the Manager] : *Only with one stop*

[22/08/2022 14:01:03] [the Manager] : *Rome or Frankfurt*

[22/08/2022 14:01:21] [the Manager]: *We can make tickets of them from now*

[22/08/2022 14:01:33] [the Manager] : *And you are Shure for them*

[22/08/2022 14:01:58] [the Manager]: *Its season my friend [...]"*

- On 25 August 2022 (quoted *verbatim*):

"[...]

[25/08/2022 13:13:54] [the player]: [a document was shared]

[25/08/2022 13:16:47] [the player]: *this document has not been filled in, tomorrow I will have to go back to the federal police for a new passport, I was informed this morning!*

[25/08/2022 13:19:40] [the player]: *the emergency passport has been cancelled, that is, I will have to do the normal one that lasts 7 days! I really want to go, but it stops me! I already signed the contract and I want to sign the contract, the only thing I asked for was time and not money!*

[25/08/2022 13:20:13] [the Manager]: *Okk*

[25/08/2022 13:21:17] [the Manager]: *I send you one contract today with small money to present in federation (But that is only for registration)*

[25/08/2022 13:21:38] [the Manager]: *Ouer contract it's that what you sign*

[25/08/2022 13:21:49] [the Manager]: *Good*

[25/08/2022 13:21:56] [the Manager]: *I send you today*

[25/08/2022 13:22:24] [the Manager]: *When you come and take 30.000 need to give me back*

[25/08/2022 13:23:13] [the player]: *posso confiar em 30?*

[25/08/2022 13:23:30] [the player]: *can i trust 30?*

[25/08/2022 13:23:48] [the Manager]: *My friend*

[25/08/2022 13:24:34] [the Manager]: *We need you. We don't resolve situation to luy you*

[25/08/2022 13:24:56] [the Manager]: *Because we know. If you don't take that, you don't play*

[25/08/2022 13:25:00] [the Manager]: *And*

[25/08/2022 13:25:10] [the Manager]: *What we win, nothing*

[25/08/2022 13:26:34] [the Manager]: *If you haved the passport, we don't need to make that conversation*

[25/08/2022 13:26:44] [the Manager]: *Plus, you have the agreement*

[25/08/2022 13:26:52] [the Manager]: *In your e mail*

[25/08/2022 13:26:59] [the Manager]: *E mail it's official*

[25/08/2022 13:29:37] [the Manager]: *[the pre-contract was attached]*

[25/08/2022 13:30:05] [the Manager]: *You have to signe 2 contract.*

[25/08/2022 13:30:40] [the Manager]: *One for federation to deposit until 30 august*

[25/08/2022 13:30:55] [the Manager]: *And one for yourself*

[25/08/2022 13:31:13] [the Manager]: *Including the hand money*

[25/08/2022 13:33:03] [the Manager]: *When you come and take the money you need to sign one paper in ouer club for the amount [...]"*

- On 24 November 2022 and 25 November 2022, discussions regarding the details of the flight tickets for the player's family from Brazil to Albania, the passports of

the player's family were sent by the player, ticket reservations and its details were sent by the Manager.

- On 1 December 2022, upon the request of the player, the club sent an invitation letter for the player's family, which stated, *inter alia*, that the club was inviting the player's family, and that the club would cover the accommodation and catering during this period.

10. Between March 2023 and June 2023, the player the Manager, exchanged, *inter alia*, the following messages, via the application WhatsApp (quoted *verbatim*):

"[20/06/2023 09:09:35] [the player]: I wish I had my TPO because I'm going to lose the contract if it's not resolved today!

[20/06/2023 09:10:13] [the Manager]: Yes but your layer told me some other thing

[20/06/2023 09:11:26] [the player]: I just need the TPO to be written in the other club here in Brazil !

[20/06/2023 09:11:42] [the player]: just that !

[20/06/2023 09:12:33] [the Manager]: Ok !

I will sent you a paper that you dont have any financial obligation with the club and imediatly I will sent you the tpo

[20/06/2023 09:22:06] [the player]: send to my email !

[20/06/2023 09:23:14] [the player]: I will lose the contract ! I sent an email to the club!

[20/06/2023 09:24:40] [the Manager]: Ok

[20/06/2023 10:45:56] [the Manager]: I sent you the document that you have to sign

[20/06/2023 10:46:18] [the Manager]: When you will sign it, i will sent you the tpo

[20/06/2023 14:57:07] [the Manager]: You sent it ?

[20/06/2023 14:57:18] [the Manager]: Because i have ready the tpo"

11. On 9 June 2023, the Claimant put the Respondent in default and requested payment of EUR 15,126 corresponding to May 2023 salary, accommodation and flight tickets for the player and his family; setting a time limit expiring on 19 June 2023.

12. On 13 June 2023, the Respondent replied to the Claimant the following:

"Based on the contract the club has with the player, please inform your client that the amount he received is many times higher than the total value of his contract. We will remain waiting for the player to return to the Club's account the remaining part of the payments he received. In case this does not happen, we as a club know that we will turn to the competent bodies."

13. On 15 June 2023, the Claimant replied to the Respondent contesting the correspondence sent by the latter and confirming the content of his letter of 9 June 2023.

II. Proceedings before FIFA

14. On 27 June 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant

15. The Claimant lodged a claim for overdue payables. In his claim, the player indicated that the offer, the pre-contract, and the contract signed between the parties were valid and binding. The player further indicated that the club failed its contractual obligations towards the player and did not pay him the following amounts:

- EUR 5,000 corresponding to the balance of the signing bonus and May salary.
- EUR 4,000 corresponding to the reimbursement of the rent paid by the player. On this point the player provided with a rental agreement copy and 3 receipts of rent payments of EUR 500 (totalling EUR 1,500) and ALL 3,000 / EUR 27,85.
- EUR 6,126.60 corresponding to the reimbursement of the flight tickets for the player and his family (5 tickets in total) from Albania to Brazil. On this point, the player provided with the flight ticket receipt of EUR 6,126.60.

16. With regards to the signature bonus, the player stressed that it received EUR 27,000 instead of EUR 30,000. Equally, regarding the flight ticket, he stated that he should be entitled to the reimbursement in accordance with the evidence provided (WhatsApp messages between the player and the Manager).

17. The Claimant further requested the payment of EUR 5,000 as image and moral damages that he suffered as a consequence of the "club's unlawful decisions".

18. In view of the foregoing, the Claimant requested the following relief:

"a) Establish that the employment contract signed between the parties are valid and binding to both parties;

b) Establish that [the Respondent] has unlawfully breached the parties' employment contract for non-compliance with their financial obligations;

c) Order the Respondent to pay the Claimant, the unpaid remunerations at the amount of € 9.000,00 (nine thousand euros) as listed below:

<i>Salary May 2023 and residual value of signing fee</i>	<i>€ 5.000,00</i>
<i>Accommodation in the duration of the contract</i>	<i>€ 4.000,00</i>

d) Condemn Respondent to pay to [the Claimant], the reimbursement of 5 (five) flight tickets Saudi Arabia–Brazil (player's country) as agreed by the parties, at the amount of € 6.126,60 (six thousand and one hundred and twenty-six euros and sixty cents) paid by the player;

e) Order the Respondent pay to the Claimant a compensation amount of € 5.000,00 (five thousand euros) for all the image and moral damages suffered by the latter, as a consequence of its unlawful contractual breaches in the matter at hand;

f) Impose a sporting sanction on [the Respondent] consisting on a ban from registering any new players, either nationality or internationality, for 3 (three) registration periods, as a consequence of having unlawfully breached the parties' employment contract during the Protected Period in the matter at hand;

g) Order the Respondent to pay interest at the rate of 5% per year since the moment the due amount became outstanding."

b. Position of the Respondent

19. On 6 July 2023, FIFA general secretariat invited the Respondent to provide with its position to the claim, by no later than 26 July 2023.
20. On 31 July 2023, FIFA general secretariat (i) indicated that it did not receive any correspondence from the Respondent in reply to the present claim; and (ii) informed the parties that the submission-phase was closed (cf. art. 23 par. 1 of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*)).
21. On 18 August 2023, the Respondent submitted a correspondence in which it provided a copy of the contract and various payment receipts.

c. Comments of the Claimant

22. On 24 August 2023, FIFA general secretariat:
- acknowledged receipt of the late correspondence of the Respondent;
 - referred to art. 23, par. 1 of the Procedural Rules and reiterated that the parties may not supplement or amend their submissions or requests for relief or produce new evidence after notification of the closure of the submission phase; and
 - On the basis of art. 23 par. 2 of the Procedural Rules, requested the Claimant to provide with his comments as to the payments' evidence presented by the Respondent in its late correspondence.
23. On 24 August 2023, the Claimant requested FIFA to disregard the proofs of payments in accordance with art. 23 par. 1 of the Procedural Rules and to reject the evidence provided.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

24. 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 27 June 2023 and submitted for decision on 12 October 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules, the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
25. 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 par.1 lit. b) of the Regulations on the Status and Transfer of Players (May 2023 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 Brazilian player and an Albanian club.
26. 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 27 June 2023, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

27. For the sake of completeness, the Chamber recalled that: (i) parties to the proceedings are not authorised to supplement or amend their submissions or requests for relief or produce new evidence once the submission phase is closed (cf. art. 23, par. 1 of the Procedural Rules); and (ii) any supplementary information and/or documentation shall only be accepted if requested by the FIFA general secretariat in the course of the proceedings (cf. art. 23, par. 2 of the Procedural Rules). Consequently, the DRC confirmed that the Respondent's unsolicited correspondence of 18 August 2023 was inadmissible, hence disregarded, and that the club's right to be heard had been fully respected, in that the club failed to timely comment as instructed by the FIFA general secretariat on 6 July 2023.

b. Burden of proof

28. 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 TMS.

c. Merits of the dispute

29. 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

30. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that Claimant requested the payment of certain financial obligations by the Respondent as per the offer, pre-contract and the contract.

31. 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 Respondent and, if so, whether the latter had a valid justification for not having complied with its financial obligations. In doing so, the Chamber underlined that the Respondent failed to present its reply to the claim of the Claimant within the timeframe granted by FIFA general secretariat, and therefore its decision would be made on the basis of the documentation on file, that is, the argumentation and evidence filed by the Claimant, in line with article 14 par. 1 of the Procedural Rules.

32. In doing so, the Chamber first noted that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. Nonetheless, no evidence was (timely) provided.
33. Subsequently, the Chamber proceeded to analyse each of the requests made by the Claimant. In doing so, the Chamber first stated that the player is entitled to the May salary, per the contract and on the basis of the legal principle *pacta sunt servanda*.
34. Then, with regards to the signature bonus, the Chamber noted that this amount did not appear in the contract, however, it appeared in the pre-contract, document that was not contested by the club and shared via the application WhatsApp by the Manager to the player. As a general rule, the Chamber stressed that the contract superseded any previous negotiations/pre-contracts that the parties may have. However, in the present case, the Chamber also noted that according to the WhatsApp communications on 25 August 2022 between the player and the Manager -which remained uncontested by the Respondent- (quoted below), the player was provided with a contract with lower amounts for registration purposes:

"[...] [25/08/2022 13:21:17] [the Manager]: ***I send you one contract today with small money to present in federation (But that is only for registration)***

[25/08/2022 13:21:38] [the Manager]: *Ouer contract it's that what you sign*

[25/08/2022 13:21:49] [the Manager]: *Good*

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[25/08/2022 13:23:13] [the player]: *posso confiar em 30?*

[25/08/2022 13:23:30] [the player]: *can i trust 30?*

[...]" (emphasis added).

35. Moreover, the WhatsApp messages appeared to be in line with what was negotiated in the offer and the pre-contract. In view of the foregoing, the Chamber considered that the real conditions of the employment contract established between the parties included a signature bonus, therefore, the Chamber decided to award the Claimant the balance of the signature bonus (EUR 3,000).

36. With regards to the accommodation requested (EUR 4,000), the Claimant provided with a copy of the rental agreement and 3 receipts of EUR 500 each and ALL 3,000. Considering that it was contractually stipulated; the Chamber decided to award the amounts that were effectively paid by the Claimant, i.e., EUR 1,500 in accordance with the receipts provided.
37. With regards to the return flight tickets, the Chamber decided not to award that amount considering that there was not a contractual basis for it and according to the WhatsApp communications provided by the player the Manager, the club agreed to pay the flight from Brazil to Albania, but the Chamber highlighted that there was no evidence that the club agreed to pay the return flight as well.
38. Lastly, with regards to the damage compensation, the Chamber decided not to award such amount as it lacks a contractual or regulatory basis for it.
39. In view of the foregoing and bearing in mind the basic legal principle of *pact sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the contract concluded between the parties, namely EUR 6,500.
40. Lastly, 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 on said outstanding remuneration at the rate of 5% p.a. as of 26 August 2022 until the date of effective payment for the amount of EUR 3,000; and as of 1 June 2023 until the date of effective payment for the amount of EUR 3,500

ii. Art. 12 bis of the Regulations

41. 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.
42. 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.
43. 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.
44. 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 first offense by the club within the last two years, the Chamber decided to impose a warning on the club in accordance with art. 12bis par. 4 lit. a) of the Regulations.

45. 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

46. 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.
47. 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.
48. 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.
49. 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.
50. 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

51. 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.

52. 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.
53. 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, Erick Flores Bonfim, is partially accepted.
2. The Respondent, Flamurtari FC, must pay to the Claimant the following amounts:
 - **EUR 3,000 as outstanding remuneration** plus 5% interest *p.a.* as from 26 August 2022 until the date of effective payment;
 - **EUR 3,500 as outstanding remuneration** plus 5% interest *p.a.* as from 1 June 2023 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. A warning is imposed on the Respondent (cf. art 12bis of Regulations on the Status and Transfer of Players).
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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