

Decision of the Dispute Resolution Chamber

passed on 25 October 2023

regarding an employment-related dispute concerning
the player **Marcos Garbellotto Silveira Pedroso**

BY:

Roy Vermeer (Netherlands), Single Judge of the DRC

CLAIMANT:

Marcos Garbellotto Silveira Pedroso, Brazil

Represented by Yakub Kizilkaya

RESPONDENT:

CS Mioveni, Romania

Represented by Diaconu Silviu Constantin

I. Facts of the case

1. On 1 February 2023, the Brazilian player, Marcos Garbellotto Silveira Pedroso (hereinafter: *Claimant* or *player*) and the Romanian club, CS Mioveni (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *contract*) valid as from 1 February 2023 until 15 June 2024.
2. Art. XI of the contract, with the title “*Applicable law*” reads as follows:
“This Agreement will be governed and interpreted according to the Law of physical education and sports no. 69/2000, to the Civil code, to the Regulation on the Status and Transfer of Football Players, to the Law 227/2015 regarding the fiscal code and to the Regulations of FRF and FIFA. The conflicts related to the execution, performance, modification, suspension or termination of this Agreement will be solved in the following order of proceedings:
 - *Amiably;*
 - *As litigations, considering that the competence to solve such litigations belongs to the arbitration courts of sports, that is the competent committees of FRF and/or LPF, depending on the case, and TAS, excepting those that belong exclusively to the competence of the courts of law, under the law. (FIFA Football Tribunal, pursuant RSTP of FIFA and Appeal to CAS).”*
3. On 22 May 2023, the parties concluded an termination agreement (hereinafter: *termination agreement*), according to which the club undertook to pay the player the amount of EUR 17,000, as follows:
 - EUR 6,400 on 25 May 2023;
 - EUR 5,300 on 25 June 2023;
 - EUR 5,300 on 25 July 2023.
4. The termination agreement establishes: *“In case of non compliance with dates and non payment of agreed amounts, the player may seek the rights in the FIFA court located in Switzerland, thus fitting the punishments provided in FIFA regulations.”*

II. Proceedings before FIFA

5. On 3 August 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

6. In his claim, the player requested payment of EUR 17,000, resulting from the termination agreement, plus 5% interest *p.a.* as of the respective due dates.

7. In his claim, the player argued that the club failed to remit the amounts defined in the termination agreement.

b. Position of the Respondent

8. In its reply, the club held that the club is undergoing insolvency proceedings in Romania and that therefore the sole competent court can be a "*Romanian Tribunal*".
9. Moreover, the club argued that the parties opted to submit disputes to "*domestic jurisdictional bodies of the Romanian Football Federation*" in accordance with art. XI of the contract.
10. According to the club, the "*NDRC of the RFF*" does meet the requirements set by FIFA as to "*composition, independence and fair proceedings*".

c. Replica of the Claimant

11. In his replica, the Claimant rejected the arguments as to jurisdiction of the Respondent.
12. He pointed out that he was not part of any insolvency proceeding in Romania.
13. Nevertheless, the player acknowledged receipt of a partial payment in the amount of EUR 5,300.

d. Duplica of the Respondent

14. In its duplica, the Respondent insisted that the Romanian courts are solely competent.
15. The club submitted a court order dated 31 August 2023, according to which all proceedings involving the club are "*suspended*".

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

16. First of all, the Single Judge (hereinafter also referred to as *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 3 August 2023 and submitted for decision on 25

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.

17. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 1 lit. a) 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), he is, in principle, competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player and a club.
18. However, the Single Judge noted that the Respondent disputed FIFA's competence to decide the matter at hand for two different reasons:
 - a) The presence of insolvency proceedings;
 - b) An alleged arbitration clause in favour of the NDRC in Romania.
19. In this regard, the Single Judge noted that although insolvency proceedings appear to have been opened in Romania against the Respondent, it appears that the club is still affiliated to the Romanian Football Federation. Therefore, the Single Judge decided to reject said argument.
20. Subsequently, the Single Judge turned his attention to the alleged arbitration clause and he noted that the termination agreement at the basis of the dispute did not contain any arbitration clause whatsoever in favour of the NDRC of Romania, but even refers to FIFA in case of a dispute.
21. As a consequence, the Single Judge was of the opinion that the first pre-requisite for establishing the competence of an NDRC was not met, and therefore, without the need to enter the analysis of any further requirement, he established that the Respondent's objection to the competence of FIFA to deal with the present matter has to be rejected and that the Dispute Resolution Chamber is competent, on the basis of art. 22 par. 1 lit. b) of the Regulations, to consider the present matter as to the substance.
22. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he 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 12 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

23. 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

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

25. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the Claimant requested payment of an amount agreed upon in a termination agreement.
26. In this context, the Single Judge acknowledged that his 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.
27. The Single Judge 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.
28. Nonetheless, the Single Judge noted that the Respondent made a partial payment and proposed to remit the amounts in the process of insolvency, therefore acknowledged the debt as such.
29. On account of the above, the Single Judge decided that the Respondent is liable to pay the outstanding amounts from the termination agreement to the Claimant.

ii. Consequences

30. The Single Judge observed that the financial obligations deemed as outstanding in the present case correspond to EUR 11,700, in accordance with the termination agreement, taking into account the partial payment.
31. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amounts claimed as outstanding under the contract, in total EUR 11,700, as detailed above.
32. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the Single Judge decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amounts as from the respective due dates until the date of effective payment.

iii. Compliance with monetary decisions

33. Finally, taking into account the applicable Regulations, the Single 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.
34. In this regard, the Single 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.
35. Therefore, bearing in mind the above, the Single 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.
36. 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.
37. The Single 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.

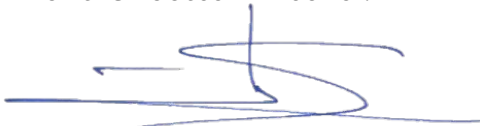
d. Costs

38. The Single 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 Chamber decided that no procedural costs were to be imposed on the parties.
39. Likewise, and for the sake of completeness, the Single 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.
40. Lastly, the Single 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 Football Tribunal has jurisdiction to hear the claim of the claimant, Marcos Garbellotto Silveira Pedroso.
2. The claim of the Claimant is partially accepted.
3. The Respondent, CS Mioveni, must pay to the Claimant the following amount(s):
 - **EUR 1,100** as outstanding remuneration plus 5% interest *p.a.* as from 26 May 2023 until the date of effective payment;
 - **EUR 5,300** as outstanding remuneration plus 5% interest *p.a.* as from 26 June 2023 until the date of effective payment;
 - **EUR 5,300** as outstanding remuneration plus 5% interest *p.a.* as from 26 July 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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