

Decision of the Dispute Resolution Chamber

passed on 10 November 2023

regarding an employment-related dispute concerning
the player Blerim Krasniqi

BY:

Alexandra Gomez Bruinewoud, Uruguay & the Netherlands

CLAIMANT:

Blerim Krasniqi, Albania

Represented by Arsen Selmanaj

RESPONDENT:

CS Mioveni, Romania

Represented by Diaconu Silviu Constantin

I. Facts of the case

1. On 16 August 2022, the Albanian player, Blerim Krasniqi (hereinafter: *the player* or *the Claimant*), and the Romanian club, CS Mioveni (hereinafter: *the club* or *the Respondent*), concluded an employment contract valid as from the date of signature until 30 June 2024 (hereinafter: *the Employment Contract*).
2. Under clause 4 of the Employment Contract, the club undertook to pay to the player *inter alia* EUR 7,100 net as monthly salary.
3. On 23 May 2023, the same parties concluded a document titled "*Contract Termination for Contract Number 117/17.08.2022*" by means of which they decided to terminate their employment relationship and settle the financial obligations arising thereto (hereinafter: *the Termination Agreement*).
4. Pursuant to the Termination Agreement, the club undertook to pay the player a total of EUR 40,000 net, payable as follows:
 - a. EUR 15,200 net by 31 May 2023;
 - b. EUR 7,600 net by 15 June 2023;
 - c. EUR 7,600 net by 15 July 2023; and
 - d. EUR 9,600 net by 15 August 2023.
5. In addition, the Termination Agreement reads as follows: "*In case the parties (sic) have misunderstandings regarding this contract, the competence to solve them will be exclusively FIFA DRC and the appeal body will be CAS*".
6. On 14 June 2023, the club submitted a request to open insolvency proceedings ("*preventive concordat*") before the national courts in Romania.
7. On 16 June 2023, the club paid RON 38,000 to the player.
8. On 22 June 2023, the Romanian national courts admitted the club's request for opening of insolvency proceedings and *inter alia* appointed the authorized administrator (hereinafter: *the Administrator*).
9. On 7 August 2023, the Administrator submitted a restructuring plan for the club and *inter alia* listed the player as creditor of RON 162,000.
10. On 25 September 2023, the player put the club in default of payment of EUR 32,400 net, corresponding to the balance of the Settlement Agreement (*i.e.*, EUR 40,000 *minus* EUR 7,600 paid by the club). The player granted the club a 10 days' deadline in order to remedy the breach.

II. Proceedings before FIFA

11. On 6 October 2023, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the player

12. In his claim, the player explained that the club failed to comply with its financial duties per the Termination Agreement. Consequently, he requested to be awarded the total amount of EUR 32,400 net corresponding to the balance of the first instalment (*i.e.*, EUR 7,600) *plus* the other three remaining instalments.

13. The player also requested to be awarded interest of 5% *p.a.* as from the respective due dates.

b. Position of the club

14. On 31 October 2023, the club filed its reply to the claim.

15. In its reply, the club challenged FIFA's jurisdiction on the basis of the fact that it is undergoing a specific procedure of insolvency ("*preventive concordat*") under the national law. As such, the club alleged that any and all claims should be suspended and handled exclusively by the Romanian courts. Likewise, the credit of the player had already been considered in restructuring plan issued by the Administrator, therefore preventing the jurisdiction of FIFA.

16. The club filed the following relief:

"31. After the examination of all the evidence and arguments of the parties, we respectfully request the honourable Chamber:

I. The inadmissibility of the Coach's claim (sic), based on art. 22 let. c) of the Regulations on the Status and Transfer of Players, for lack of jurisdiction of the FIFA jurisdictional bodies to settle this dispute on the merits.

II. In subsidiary, if FIFA tribunal consider that is competent to settle this dispute, pursuant to article 26 of the Procedural Rules Governing the Football Tribunal, we would like to request the mediation procedure which is deemed appropriate in the matter and the Claimant is going to receive the full amount, but within 34 months of instalments according to the reorganization plan and the settlement proposal sent to him by the special administrator of the insolvency procedure".

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

17. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *Single Judge*) analysed whether she was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 6 October 2023 and submitted for decision on 13 November 2023. Taking into account the wording of art. 34 of the May 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.
18. 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 par. lit. b) of the FIFA RSTP (May 2023 edition), the Dispute Resolution Chamber (DRC) is – in principle – competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a French player and a Romanian club.
19. Notwithstanding the above, the Single Judge acknowledged that the club challenged the jurisdiction of the Football Tribunal to deal with the matter at hand due to the ongoing procedure of insolvency ("*preventive concordat*"), the exclusive competence over this dispute lies with national courts of Romania.
20. On this note, the Single Judge firstly noted that the club is still affiliated and participating in competitions within the auspices of the FRF. As such, she established, in line with the long-standing jurisprudence of the Football Tribunal, that the insolvency proceedings *per se* do not prevent the jurisdiction of FIFA but pertains to the execution of the decision only, which accordingly refer to the substance of the matter.
21. Furthermore, the Single Judge outlined that the abovementioned conclusion was also irrespective of the player being listed by the Administrator as a creditor in any restructuring plan, insofar as: (i) she was not convinced that such plan was final and binding (certified by the Court); as well as (ii) any acknowledgement of debt by the club was unilateral, hence lacked agreement by the player – especially as to the *quantum*.
22. Consequently, the Single Judge decided that the club's position in this respect should be dismissed.
23. Finally, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she confirmed that, in accordance with art. 26 par. 1 and 2 of the FIFA RSTP (May 2023 edition) and considering that the present claim was lodged on 25 September 2023, the cited edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

24. 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 she 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

25. The 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 she will refer only to the facts, arguments, and documentary evidence, which she considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

26. The foregoing having been established, the Single Judge moved to the substance of the matter, and noted that it pertains to a claim for outstanding remuneration only.
27. In particular, the Single Judge observed that the player claimed to be entitled to EUR 32,400 net as outstanding salaries. The club, on the other hand, limited itself to challenge FIFA's jurisdiction considering the insolvency proceedings, hence tacitly accepted its default.
28. Consequently, the Single Judge determined that the player should be entitled to the amounts sought on the basis of the legal principal of *pacta sunt servanda*. Furthermore, taking into consideration the player's request as well as the constant practice of the Football Tribunal in this regard, the Single Judge decided to award the player interest at the rate of 5% p.a. on the outstanding amounts, as follows:
- EUR 7,600 net plus 5% interest as from 1 June 2023;
 - EUR 7,600 net plus 5% interest as from 16 June 2023;
 - EUR 7,600 net plus 5% interest as from 16 July 2023; and
 - EUR 9,600 net plus 5% interest as from 16 August 2023.
29. In light of the foregoing, the Single Judge decided that the claim should be partially accepted (with the exception of the *dies a quo* for the calculation of the interest sought).

ii. Compliance with monetary decisions

30. 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.
31. The Single Judge also recalled 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.
32. Likewise, the Single Judge highlighted that art. 24, par. 3, lit. b) of the Regulations reads as follows:
- “Such consequences may be excluded where the Football Tribunal has:
[...] b) been informed that the debtor club was subject to an insolvency-related event pursuant to the relevant national law and is legally unable to comply with an order.”*
33. In view of the foregoing, the Single Judge underscored that two requirements have to be met in order to use the exemption stipulated above, namely: (i) the debtor club is subject to an insolvency-related event pursuant to the relevant national law; and (ii) it is legally unable to comply with an order.
34. With the above in mind, she turned to the documentation on file and noted that the club submitted, together with its position: (i) a copy of the application before the Romanian national courts requesting the opening of the insolvency proceedings; (ii) a copy of the decision of such court admitting its request and appointing the Administrator; (iii) a copy and specific references to the Romanian Law no. 85/2014.
35. After a thorough analysis of the abovementioned documentation, the Single Judge was of opinion that, in spite of demonstrating that insolvency proceedings were apparently opened against it in Romania, the club did not fulfil the second requirement stipulated by art. 24, par. 3 of the Regulations. In particular, the Single Judge deemed that the club could not establish to a comfortable satisfaction degree that the player was ever made aware of the insolvency proceedings nor that the club was in fact prevented from delivering any payment.
36. In parallel, the Single Judge also found it decisive that the Contract was signed only 6 months before the application for insolvency proceedings *i.e.*, when the financial conditions were (or, at least, should be) known by the club.
37. It follows, in the Single Judge’s opinion, that art. 24 of the Regulations is applicable to the case at stake.

38. Therefore, bearing in mind the above, the Single Judge decided that the club must pay the full amount due (including all applicable interest) to the player within 45 days of notification of the decision, failing which, at the request of the player, 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 club in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
39. The club shall make full payment (including all applicable interest) to the bank account provided by the player in the Bank Account Registration Form, which is attached to the present decision.
40. 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

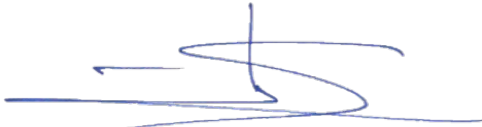
41. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
42. 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.
43. 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, Blerim Krasniqi.
2. The claim of the Claimant is partially accepted.
3. The Respondent, CS Mioveni, must pay to the Claimant the following amount(s):
 - **EUR 7,600 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 June 2023 until the date of effective payment;
 - **EUR 7,600 net as outstanding remuneration** plus 5% interest *p.a.* as from 16 June 2023 until the date of effective payment;
 - **EUR 7,600 net as outstanding remuneration** plus 5% interest *p.a.* as from 16 July 2023 until the date of effective payment; and
 - **EUR 9,600 net as outstanding remuneration** plus 5% interest *p.a.* as from 16 August 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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