

Decision of the Dispute Resolution Chamber

passed on 9 November 2023

regarding an employment-related dispute concerning the player Luiz Henrique Pachu Lira

BY:

Frans DE WEGER (The Netherlands), Chairperson

Mario FLORES CHEMOR (Mexico), member

Tomislav KASALO (Croatia), member

CLAIMANT:

Luiz Henrique Pachu Lira, Brazil

RESPONDENT:

Clube Desportivo Trofense, Portugal

I. Facts of the case

1. On 5 July 2021, the player and the club concluded an employment contract valid as from 6 July 2021 until 30 June 2023.
2. On 30 June 2023, the parties concluded a termination agreement.
3. Accordingly, the parties agreed upon the following:

"1. Clube Desportivo Trofense Futebol - SAD undertakes to pay the salaries for the month of April 2023, May 2023 and June 2023 in the total amount of 6,498.00 euros (...).

2. As a global pecuniary compensation, Clube Desportivo Trofense Futebol - SAD undertakes to pay the player the amount of EUR 24,500 (...).

3. The amounts provided for in the preceding paragraphs (1 and 2) will be settled in 6 monthly instalments, equal and successive in the amount of 5. 166.33 (...) each, the first instalment to be paid by July 30, 2023, the second instalment to be paid by August 30, 2023, the third instalment by September 30, 2023, the fourth instalment by October 30, 2023, the fifth instalment by November 30, 2023 and the sixth instalment by December 30, 2023."

4. The termination agreement included the following acceleration clause:

"3.1 In the event that Clube Desportivo Trofense Futebol - SAD fails to pay the PLAYER any of the agreed instalments on the dates determined in clause 3 above, the total amount due may be immediately collected and Clube Desportivo Trofense Futebol - SAD must immediately comply with the full payment of the remuneration due at the time. In this case, a fine of 15%, plus interest of 12% per annum will be levied on the total amount due, counted from the due date until the date of payment."

II. Proceedings before FIFA

5. On 12 August 2023, the player lodged a claim before the FIFA Football Tribunal for outstanding remuneration and requested the payment of the following amounts:
 - EUR 30,997 plus 12% interest p.a. as from 1 August 2023;
 - EUR 4,649.70 plus 12% interest p.a. as from 1 August 2023.
6. According to the player, the club failed to pay the first instalment in the termination agreement, meaning that the entire amount fell due.
7. In its reply, the Respondent argued that it is undergoing a Special Revitalization Process due to severe financial difficulties, and provided several documents in this regard (in Portuguese only).

8. More specifically, the Respondent provided a document issued by “n insolvencies” named as *“Lista Provisória de Créditos – Art. 17 D CIRE”*, listing the player as follows: *“69. Luis Henrique Pachu Lira NIF 306 488 817 Rua Américo Campos, n.º 128 4785-283 Trofa Crédito constante da contabilidade da Devedora - Crédito laboral Privilegiado Nota 1 Montante 30 998,00 Capital 30 998,00 (...) Crédito reconhecido 30 998,00”*
9. The Respondent argues that the Claimant's claims are irrelevant and that the Termination Agreement specifies the outstanding amounts.
10. The Respondent requested the closure or suspension of the proceedings until the club's insolvency process concludes and referred to art. 55 b) of the FIFA Disciplinary Code.
11. The club explained that the reorganization insolvency proceedings are meant to help the debtor avert straight bankruptcy by means of the restructuring all debts through a payment plan (ordinarily with quotas and a mandatory waiting period of several years). If the debt payment plan is approved by the insolvency judge and the creditors, the reorganization insolvency proceedings shall finalize once all included debts have been paid.
12. The Respondent acknowledged the signature of the termination agreement.
13. In his *replica*, the Claimant underlined that the evidence provided by the club is in Portuguese only, and therefore does not comply with the requirements of art. 13 par. 3 of the Procedural Rules Governing the Football Tribunal.
14. Nevertheless, the player considered that the information provided by the club is cryptic and confusing since, on the one hand, it affirms that the revitalization process commenced but, on the other hand, apparently, there is no reference regarding the date when it effectively occurred.
15. The Claimant further argued that under FIFA DRC well-established jurisprudence, the fact that a club is under insolvency proceedings does not automatically mean that it should not comply with its contractual obligations.
16. According to the Claimant, in accordance with Portuguese law, since the debt arose from a working relationship between the Player and the Club, the Club cannot evade from its contractual obligations under the Termination Agreement.
17. The Claimant further explained that d, the Club did not explain in its written submissions in what consisted the PER, except in generic terms. Moreover, the Claimant argued that the club only stated that the PER were initiated by the Club, which supposedly implied the freezing of credits and the appointment of a judicial administrator, but without even saying when or if it had already occurred.

18. The player argued that the Club absolutely did not explain what was the role of a so called “administrator” nor the scope of the revitalization process, since the Club just made general statements regarding the purpose of this process in Portugal and, subsequently sustained that the present proceedings should be immediately closed or suspended.
19. The Claimant insisted in the initially claimed amounts.
20. The Respondent failed to provide its *duplica*.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

1. 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 12 August 2023 and submitted for decision on 9 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.
2. 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 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 a Portuguese club.
3. 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 May 2023, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

4. The 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 Transfer Matching System (TMS).

c. Admissibility

5. The Chamber first noted that the competence of FIFA was disputed by the Respondent as the latter considered that the matter should be closed or suspended due to the existence of insolvency proceedings in Portugal.

6. In this respect, the Chamber noted that, in support of its allegations, the Respondent submitted all its evidence in Portuguese only. In this regard, the Chamber referred to art. 13 par. 1 of the Procedural Rules, according to which *"Any submission to FIFA shall be made in English, Spanish, or French. Any submission to FIFA not made in one of the aforementioned languages will be disregarded."*
7. As a result, the Chamber determined that the evidence provided by the club is insufficient and therefore it cannot be established that the club met its burden of proof.
8. In addition, the Chamber noted that the club's submission lacks a comprehensive explanation of the insolvency process, since it does not clearly articulate when the insolvency proceedings began, what their objectives are, and how they might affect the club's financial obligations, particularly those outlined in the Termination Agreement. The club did not provide specific details about the process along with a valid translation into English, Spanish or French, such as, for instance the appointment of an administrator or information about any proposed debt repayment plan. The Chamber also noted that the club's statements regarding the initiation and progress of the insolvency process are also vague.
9. In sum, the Chamber considered that the club's lack of clarity makes it challenging for to fully understand the nature and implications of the insolvency process. Given that the club did not sufficiently meet its burden of proof concerning the insolvency proceedings, the Chamber had no other option than to assume that the club's position in this regard cannot be upheld.
10. Therefore, the Chamber established that the claim is admissible, and the Football Tribunal is in a position to render a decision.

d. Merits of the dispute

11. 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

12. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the matter at stake concerns the payment of outstanding amounts arising from a termination agreement concluded between the parties on 30 June 2023, according to which the parties agreed upon the payments mentioned in point I. 3 above.

13. In this context, the Chamber noted that the club did not deny its lack of payment.
14. Furthermore, the Chamber also noted that the termination agreement further included an acceleration clause (clause 3.1) if the club failed to pay the first instalment, as well as a penalty of 15% plus an agreed interest rate of 12% p.a.
15. As a result, in accordance with the determined agreement, the Chamber established that the Respondent shall pay the principal outstanding amount of EUR 30,997 for outstanding remuneration, plus 12% interest p.a. as from the due date, until the effective payment date.
16. Furthermore, also in accordance with the contractual terms, the Chamber established that a contractual penalty of EUR 4,649.70 is applicable, representing 15% of the principal amount. This Chamber deemed this penalty to be reasonable, in accordance with its longstanding own jurisprudence for comparable situations.

e. Compliance with monetary decisions

17. 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.
18. 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.
19. 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.
20. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form.
21. 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.

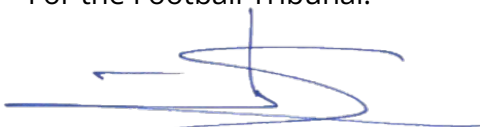
f. Costs

22. 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.
23. 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.
24. 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, Luiz Henrique Pachu Lira, is admissible
2. The claim of the Claimant is partially accepted.
3. The Respondent, Clube Desportivo Trofense, must pay to the Claimant the following amounts:
 - **EUR 30,997 as outstanding remuneration** plus 12% interest *p.a.* as from 31 July 2023 until the date of effective payment;
 - **EUR 4,649.70 as contractual penalty.**
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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