

# Decision of the Dispute Resolution Chamber

passed on 12 October 2023

regarding an employment-related dispute concerning  
the player Loic Alex Hubert Remy

**BY:**

**Clifford J. HENDEL (USA)**, Deputy Chairperson

**Michele COLUCCI (Italy)**, member

**Alejandro ATILIO TARABORELLI (Argentina)**, member

**CLAIMANT:**

**Loic Alex Hubert Remy, France**

Represented by Ercan Sevdimbaş

**RESPONDENT:**

**Yukatel Adana Demirspor A.S., Türkiye**

## I. Facts of the case

1. On 8 February 2022, the French player Loic Remy (hereinafter: the *Claimant or player*) and the Turkish club Adana Demirspor (hereinafter: the *Respondent or club*) concluded an employment contract valid as from said date until 31 May 2022.
2. On 31 March 2023, the Claimant and the Respondent concluded a settlement agreement (hereinafter: *the settlement agreement*) having as object the outstanding remuneration deriving from the parties' previous employment contract.
3. Pursuant to the settlement agreement, the Respondent undertook to pay the Claimant a total of EUR 218,000, broken down as follows:
  - EUR 118,000 due on 7 April 2023;
  - EUR 50,000 due on 3 June 2023;
  - EUR 50,000 due on 3 August 2023.
4. In accordance with art. 1.2 of the settlement agreement, the parties agreed that *"if the Club does not pay any instalment on time, the Club will pay a penalty of EUR 30.000 to the Player for each payment not paid on the due date. In addition, the parties have agreed that if any instalment is not paid on due date, all the remaining payments will become due without any notice"*.
5. By correspondence dated 20 June 2023, the Claimant put the Respondent in default of payment of EUR 130,000 granting a deadline of 3 days to in order to remedy the default.
6. In this context, the Claimant reminded the Respondent that having the 3<sup>rd</sup> instalment become due by virtue of the acceleration clause stipulated under art. 1.2 of the settlement agreement, a further penalty of EUR 30,000 would have been imposed on the Respondent if the latter had not complied with its financial obligation within the following 3 days.
7. On 23 June 2023, the Respondent paid an amount of EUR 100,000 to the Claimant, and commented the following:

*"As you are well aware we have paid the first instalment amount of 118.000 Euro. However, we have failed to pay the second instalment on due time. However as of today we pay you the second and third instalments together (due time 03.06.2023 and due time 03.08.2023) totally 100.000 Euro (each instalment 50.000 Euro). You can find the bank receipts on the attachment of the e-mail. You have stated that, there is 30.000 Euro penalty occurs from the late payment, we would kindly like to state that this penalty clause should be accepted as exorbitant and invalid. As you know, we have signed the settlement agreement on the last day of licensing of European Cups. Since we made the first payment late, we think we made up for our mistake by paying the third instalment about 1,5 months early. The reason we are late for the payment*

*are the earthquake, the Parliamentary elections, president elections and the problematic of exchange of foreign money currencies.”*

## II. Proceedings before FIFA

8. On 4 August 2023, the Claimant lodged the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### a. Position of the Claimant

9. According to the Claimant, the Respondent failed to comply with its financial obligations deriving from the settlement agreement, namely with respect to the 2<sup>nd</sup> instalment.
10. In this context, the Claimant held that accordingly the relevant acceleration clause stipulated under the settlement agreement had been triggered as well as the penalties thereto connected, hence the Respondent should have paid a total of EUR 130,000 within the deadline granted by the Claimant, corresponding to the 2<sup>nd</sup> and 3<sup>rd</sup> instalments and the relevant penalty for the delay in the payment of the 2<sup>nd</sup> instalment.
11. In this respect, the Claimant added that, having the Respondent failed to pay part of the above-mentioned amount, also the payment of the 3<sup>rd</sup> instalment could not be deemed as fully realized within the due time, hence a further penalty of EUR 30,000 shall be imposed on the Respondent in line with art 1.2 of the settlement agreement.
12. Accordingly, the request for relief by the Claimant was of EUR 60,000 as outstanding penalty fees plus a 5% interest per annum running from 3 June 2023.

### b. Position of the Respondent

13. In its reply, the Respondent argued having acted in good faith first by paying the 2<sup>nd</sup> instalment just 3 days after the default notice sent by the Claimant on 20 June 2023, and subsequently by paying the relevant 3<sup>rd</sup> instalment 45 days before the due date stipulated under the settlement agreement.
14. In this respect, the Respondent stated having had several financial problems due to the catastrophic seismic events that had occurred in the Adana region during the spring of 2023, which led to a consequent paralysis of the Turkish economy.
15. Consequently, the Respondent held that it should not be held liable for an exiguous delay in the payment of the 2<sup>nd</sup> instalment only, especially as it complied *inter alia* with the relevant acceleration clause under the settlement agreement by paying the 3<sup>rd</sup> instalment immediately after.

16. Subsidiarily, the Respondent prayed that if any penalty has to be paid, its amount shall be reduced because excessive as corresponding to more than 50% of each remaining instalment. In this respect, the Respondent requested that the penalty fee shall be reduced to a total of 10% of the delayed amounts.
17. Finally, the Respondent requested that if the penalty clause was not considered excessive, said penalty shall be imposed only with respect to the 2<sup>nd</sup> instalment, as this was the only one paid late, while the 3<sup>rd</sup> instalment has been paid more than one month in advance, in compliance with the relevant settlement agreement.

### **III. Considerations of the Dispute Resolution Chamber**

#### **a. Competence and applicable legal framework**

18. 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 4 August 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 Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
19. 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 French player and a Turkish club.
20. 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 4 August 2023, the abovementioned edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### **b. Burden of proof**

21. 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. Merits of the dispute

22. 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

23. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute the monies due by the Respondent under the relevant settlement agreement.
24. In particular, the Chamber observed that while the parties agree on the fact that the Respondent was late in paying of the 2<sup>nd</sup> instalment originally due on 3 June 2023 and effectively remitted by the Respondent only on 23 June 2023, the latter objects to the imposition of the relevant penalties indicated under art. 1.2 of the settlement agreement, alleging *in primis* having suffered severe financial difficulties due to the earthquakes that hit Türkiye during the first semester of 2023.
25. In this context, the DRC also noted that the Respondent did not contest the validity of the acceleration clause contained in the same art. 1.2 of the settlement agreement, arguing however having paid the relevant outstanding instalments simultaneously and within the deadline given by the Claimant, thus acting in good faith and in accordance with the aforementioned settlement agreement.
26. In this respect, given that it stands undisputed from a factual perspective that the Respondent paid all the relevant instalments stipulated under the settlement agreement, the Chamber acknowledged that it its task was to establish whether the assessed delay in the payment of the 2<sup>nd</sup> instalment would entitle the Claimant to charge any penalty, hence to demand any further amount, to be paid by the Respondent.
27. With the foregoing in mind, the Chamber started by analysing the content of the relevant provision under the settlement agreement, i.e. art. 1.2, which recites:

*"If the Club does not pay any instalment on time, the Club will pay a penalty of EUR 30.000 to the Player for each payment not paid on the due date. In addition, the*

*parties have agreed that if any instalment is not paid on due date, all the remaining payments will become due without any notice".*

28. In this respect, the members of the Chamber were unanimous in establishing that the only condition to which the parties subjected the payment of the relevant penalty of EUR 30,000 was the mere delay in the payment of any of the 3 instalments stipulated under the settlement agreement.
29. Contextually, the Chamber also recalled that the Respondent did not contest that, in principle, it shall be held liable for the payment of the relevant penalty due to the admitted delay in the payment of (at least) the 2<sup>nd</sup> instalment, but that it conversely objected having faced unpredictable circumstances (i.e., the earthquakes) which allegedly caused the mentioned delay as these were not depending on club' sphere of control.
30. The Chamber however noted that, in the case at hand, the Respondent bore the burden of proving that it indeed was materially unable to comply with the financial terms of the contract concluded between the parties, *quod non*. Accordingly, absent such evidence and any further reasonable justification provided by the Respondent for not having complied with the terms of the contract, the DRC decided that its position could not be upheld.
31. As a consequence, the members of the Chamber confirmed that, based on art. 1.2 of the settlement agreement, and in accordance with the general legal principle of *pacta sunt servanda*, the Respondent shall be held liable for its delay in the payment of the relevant instalments.
32. Notwithstanding the above, the Chamber noted the content of the Claimant's default notice dated 20 June 2023, by means of which the latter first demanded the Respondent to pay the sum of EUR 130,000 in accordance with art. 1.2 of the settlement agreement and then warned the same Respondent that, had the latter not complied with its financial obligation within the following 3 days, a further penalty of EUR 30,000 would have been imposed by the Claimant.
33. Based on the wording of the mentioned letter, and focusing in particular on the amounts requested by the Claimant, it appears evident to the members of the Chamber that the intention manifested at the time by the Claimant was to impose a penalty on the 2<sup>nd</sup> instalment only, otherwise he would have not granted any further deadline to the Respondent.
34. Accordingly, in the Chamber's view, the Claimant's conduct openly contradicted his claim and generated diverging expectations in the Respondent, who *de facto* was not put in default of the 2<sup>nd</sup> penalty fee until the notification of the relevant proceeding in front of FIFA.

35. In view of the above, and recalling the principle of "*nemo venire contra facta propria*", the members of the DRC decided that the Respondent shall pay only the penalty fee related to the delay of the 2<sup>nd</sup> instalment established under the settlement agreement.
36. That said, the Chamber focused its attention on the said penalty fee and considered appropriate to preliminary remark, on a general level, that penalty clauses may be freely entered into by the contractual parties and may be considered acceptable, in the event that the pertinent written clause meets certain criteria such as proportionality and reasonableness. In this respect, the Chamber highlighted that, in order to determine whether a penalty clause is to be considered acceptable, the specific circumstances of the relevant case brought before him shall also be taken into consideration.
37. In this context, the Chamber also emphasized that a reduction of the relevant penalty may be justified when there is a significant disproportion between the agreed amount and the interest of the creditor to maintain his entire claim, measured concretely at the moment when the contractual violation took place. Disproportion must significantly exceed the limits of what appears to be normal in light of all circumstances. To evaluate the excessive character of a contractual penalty, the DRC highlighted that it must not decide in an abstract manner, but, to the contrary, take into consideration all the circumstances of the case at hand.
38. With the foregoing in mind, the Chamber outlined that in the present case, the penalty stipulated under article 1.2 of the settlement agreement is indeed corresponding to a 60% of the relevant instalment which payment was delayed (i.e., 2<sup>nd</sup> instalment).
39. As a result, the members of the DRC considered that, in the context of the total outstanding amount and the time it was overdue, such a penalty fee would not result proportionate, hence it shall be reduced to a 50% of the relevant amount which was delayed, i.e. EUR 50,000.
40. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay to the Claimant the sum of EUR 25,000 as penalty fee for the delay in the payment of the 2<sup>nd</sup> instalment stipulated under the settlement agreement.
41. Finally, with respect to the Claimant's request to apply 5% interest *p.a.* on the penalty fee, the Chamber determined that, in accordance with the longstanding jurisprudence of the FIFA deciding bodies, interest on penalty fees do not apply. Consequently, the DRC dismissed the Claimant's request on that point.

## ii. Compliance with monetary decisions

42. 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.

43. 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.
44. 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.
45. 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.
46. 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**

47. 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.
48. 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.
49. 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, Loic Alex Hubert Remy, is partially accepted.
2. The Respondent, Yukatel Adana Demirspor A.S., must pay to the Claimant the following amount(s):
  - **EUR 25,000 as penalty fee.**
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. 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.
6. 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.
7. 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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