

Decision of the Dispute Resolution Chamber

passed on 28 September 2023

regarding an employment-related dispute concerning
the player Valentin Sebastien Roger Roberge

BY:

Michele Colucci (Italy)

CLAIMANT:

Valentin Sebastien Roger Roberge, France

Represented by Loizos Hadjidemetriou

RESPONDENT:

Apollon Limassol, Cyprus

Represented by Alkis Papantoniou

I. Facts of the case

1. As of July 2016, the French player Valentin Sebastien Roger Roberge (hereinafter the *Claimant* or the *Player*) and the Cypriot club Apollon Limassol (hereinafter the *Respondent* or the *Club*) concluded several employment agreements.

2. On 25 August 2021, the Claimant and the Respondent (jointly referred to as the *Parties*) signed an employment agreement (hereinafter the *Employment Agreement*), valid as from 25 August 2021 until 30 June 2023.

3. In accordance with Clause 1.3 of the Employment Agreement, the Parties agreed upon the following financial conditions:

“1.3.1. From 31/8/2021 until 31/5/2022, a monthly gross salary of €16.200 (€14.000 net) in ten (10) instalments.

1.3.2. From 31/8/2022 until 31/5/2023, a monthly gross salary of €16.200 (€14.000 net) in ten (10) instalments.

All taxes payable to the Tax Department, as per the applicable legislation, shall be paid by the Club, except the contribution for the General Healthcare System (GHS) according to the new Law which will be paid by the Club and will be deducted from the monthly net salary of the Player (deduction of 2,65% after Feb 2020)”

4. Furthermore, Clause 13 of the Employment Agreement stipulated the following:

“13. Dispute Resolution

Any employment dispute between the Club and the Player shall fall under the exclusive jurisdiction of the National Dispute Resolution Chamber of the CFA and shall be resolved according to the applicable regulations of the CFA.”

5. Next to the Employment Agreement, the Parties furthermore signed a supplementary agreement (hereinafter the *Supplementary Agreement*), entitling the Claimant to additional bonuses depending on the sporting results of the Respondent.

6. On 5 and 8 June 2023, the Parties signed two separate settlement agreements, settling the amount of outstanding overdues to the Player in the amount of EUR 80,730.

7. In the termination agreement (hereinafter the *Termination Agreement*), the Parties agreed that the Respondent shall make the following payments:

“B. In consideration of the termination, Apollon and the Player agree and accept that APOLLON shall arrange the total amount of €27.258 net (twenty-seven thousand two hundred and fifty-eight) in total which will be paid as mentioned below at the personal bank account of the player:

€13629 payable at 1/7/2023 (salary of April 2023), with a 15-day grace period.

€13629 payable at 1/8/2023 (salary of May 2023), with a 15-day grace period.”

8. In the financial agreement (hereinafter the *Financial Agreement*), the Parties agreed that the Respondent shall make the following payments:

“B. In consideration of the termination, Apollon and the player agree and accept that APOLLON shall arrange the total amount of €53.472 net (fifty-three-thousand-four-hundred-seventy-two-euro net) in addition to the amounts stated in the Termination Agreement which will be paid as mentioned below at the personal bank account of the Player:

- 1. €11730 payable at 1/7/2023, with a 15-day grace period.*
- 2. €11742 payable at 1/8/2023, with a 15-day grace period.*
- 3. €1500 payable at 1/9/2023, with a 15-day grace period.*
- 4. €1500 payable at 1/10/2023, with a 15-day grace period.”*

9. Both the Termination and the Financial Agreement contained the following provisions:

“C. (...) In case of dispute both parties mutually agree that will be handled by the relevant FIFA bodies for settlement.”

D. In case APOLLON fails to fully pay any one of the above instalments until the expiry of its grace period, and after the player has sent a notice to the Club giving to Apollon another 5 working days for the settlement of the unpaid instalment, all remaining instalments shall become immediately due and payable and APOLLON shall also have to pay a penalty equal to the 10% of all remaining amounts, (...)”

10. On 18 August 2023, the Claimant sent a default notice to the Respondent, requesting the amounts which became due on 1 August 2023. In its correspondence, the former granted the Respondent five days to comply with its financial obligations, however, to no avail.

II. Proceedings before FIFA

11. On 28 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

12. The requests for relief of the Claimant were the following:

- i. EUR 55,371 net plus legal interest from 01/08/2023 until full settlement.*
- ii. EUR 5,537 as contractual penalty.”*

13. The Claimant argued that Clause D of the Termination and the Financial Agreement was triggered, and, hence, the acceleration clause was triggered. Based on the legal principle *pacta sunt servanda*, the Claimant requested the total outstanding amount as well as a penalty clause.

b. Position of the Respondent

14. The Respondent did not dispute that it did not comply with its obligations based on the payment schedules of the Termination and the Financial Agreement, yet requested:
- “(a) to determine that the contractual penalty of 10% is excessive and disproportionate;
(b) to determine that the Player's request for the contractual penalty is unenforceable and must be rejected.”*
15. In this respect, the Respondent was of the opinion that due to the facts that (i) *“the Club was only 3 days late on the payment of the due amounts for August 2023, as these amounts were payable to the Player until 15.08.2023”*, (ii) *“the Player failed to make any reference to the penalty fee in his notice”*, (iii) *“failure of the Club to complete a payment for only 13 days was not intentional and that it was caused by specific legal and financial developments that worsened the Club's financial situation”*, (iv) the long term relationship between the player and the club, the penalty of shall be considered as clearly excessive and unreasonable.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

16. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as the *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 28 August 2023 and submitted for decision on 28 September 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 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 Single Judge 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 Cypriot club.
18. Subsequently, the Single Judge 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 15 February 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

19. 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 he 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

20. 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 he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

21. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the Parties strongly dispute the payment of certain financial obligations by the Respondent as per Termination and the Financial Agreement (hereinafter *the Agreements*), namely EUR 55,371. Furthermore, the Claimant argued that a penalty was triggered based on a late payment of the outstanding amounts.

22. 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.

23. Firstly, the Single Judge noted that in the case at hand, he first shall analyse if acceleration clauses were triggered. In this respect, the Single Judge recalled the wording:

“C. (...) In case of dispute both parties mutually agree that will be handled by the relevant FIFA bodies for settlement.”

D. In case APOLLON fails to fully pay any one of the above instalments until the expiry of its grace period, and after the player has sent a notice to the Club giving to Apollon another 5 working days for the settlement of the unpaid instalment, all remaining instalments shall become immediately due and payable and APOLLON shall also have to pay a penalty equal to the 10% of all remaining amounts, (...)”

24. The Single Judge also recalled that on 18 August 2023, the Claimant sent a default notice to the Respondent, requesting the amounts which became due on 1 August 2023. What is

more, the Single Judge also took note that in its correspondence, the Claimant granted the Respondent five days to comply with its financial obligations, however, to no avail.

25. In view of the above, the Single Judge was of the opinion that the above-mentioned acceleration clause was triggered, along with the penalty of 10%, which the Single Judge considered proportionate in line with the jurisprudence of the Football Tribunal.
26. The Single Judge continued that the Respondent bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the Parties. Nonetheless, the Single Judge noted that no evidence nor reasonable justification was presented by the Respondent for not having complied with the terms of the Agreements.
27. 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 Agreements concluded between the parties, namely EUR 55,371 as well as a penalty of EUR 5,537.

ii. Consequences

28. 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 55,371 and EUR 5,537, as detailed above.
29. In addition, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amount of EUR 5,537 as from 24 August 2023 until the date of effective payment. The Single Judge remarked however that no interest shall be awarded on the penalty, given the principle *ne bis in idem*.

iii. 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. 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.

32. 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.
33. 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.
34. 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

35. 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, he decided that no procedural costs were to be imposed on the parties.
36. 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.
37. Lastly, the Single Judge concluded his 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, Valentin Sebastien Roger Roberge, is partially accepted.
2. The Respondent, Apollon Limassol, must pay to the Claimant the following amount(s):
 - **EUR 55,371 as outstanding remuneration** plus 5% interest *p.a.* as from 24 August 2023 until the date of effective payment;
 - **EUR 5,537 as penalty.**
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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