

Decision of the Dispute Resolution Chamber

passed on 15 November 2023

regarding an employment-related dispute concerning
the player Semir Smajlagic

BY:

Livia SILVA KÄGI (Brazil), Deputy Chairwoman
Stefano SARTORI (Italy), member
Dana MOHAMED AL-NOAIMI (Qatar), member

CLAIMANT:

Semir Smajlagic, Bosnia and Herzegovina

RESPONDENT:

JS Kabylie, Algeria

I. Facts of the case

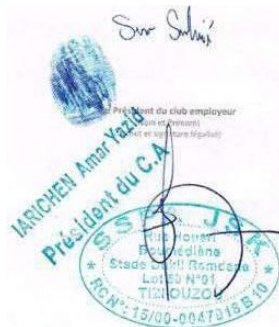
1. According to the player, he and JS Kabylie concluded an employment contract valid as from 20 January 2023 until 31 December 2024. The player attached an unsigned copy of said contract (hereinafter: **Version 1 of the contract**)
2. According to art. 3 of the **Version 1 of the contract**, the player was entitled to DZD (Algerian Dinar) 3,373,429.25 gross, convertible to EUR 15,000 net.
3. In addition, the **Version 1 of the contract** established that he was entitled to EUR 10,000 as sign-on bonus.
4. The Claimant's version of the contract included the following signature field:

Tizi-Ouzou, le 20 janvier 2023
Lu et approuvé par les parties

<p>Le Président de la SSPA – JSK M. IARICHEN Amar Yazid</p>	<p>Le Joueur SMAJLAGIC Semir</p>
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5. Furthermore, the player provided in his claim another contract (**Version 2 of the contract**), stipulating a period of validity from 20 January 2023 until 31 December 2024 and a monthly remuneration of DZD 3,373,429,25.
6. Art. 8 of the Version 2 of the contract stipulated that disputes shall be resolved amicably and that, in the alternative, disputes shall be submitted by either party to the Algerian NDRC (*le différend est soumis par l'une ou l'autre partie à la chambre de résolution des litiges de la FAF*).
7. Said version included the following signature:

Semir Smajlagic



8. In addition, another contract (**Version 3 of the contract**) is available in the Transfer Matching System (TMS), indicating a period of validity from 20 January 2023 until 19 January 2025 and a monthly remuneration of DZD 3,373,429,25.
9. The **version 3** included the following signature field:

Semir Smajlagic



II. Proceedings before FIFA

10. On 1 August 2023, the player sent a default notice and requested the payment of his entire salaries of May to July 2023, as well as his sign-on bonus, within 15 days.
11. On 17 August 2023, the player sent a termination letter, indicating that the following amounts were still outstanding:
 - EUR 15 000 for the salary of May 2023 ;
 - EUR 15 000 for the salary of June 2023 ;
 - EUR 15 000 or the salary of July 2023 ;
 - EUR 10 000 as signing bonus.
12. On 18 August 2023, the club replied and issued concerns regarding the accuracy of the provided salary statement and highlighted the timing of salary payments. The club expressed its commitment to resolving the outstanding June 2023 payment by 31/08/2023 and requested documentation for the 10,000 EUR signing bonus. Additionally, the club reiterated that salaries are denominated in Algerian dinars, not euros. The club insisted in its intent to maintain the contractual relationship with the player and explained that it included him in the 2023/2024 season squad for an upcoming training camp in Tunisia, commencing on 20/08/2023.
13. On 20 August 2023, the club sent a new letter to the player, noting that he left Algeria and indicating that his salaries were paid on 14 August 2023.
14. On 27 August 2023, the club lodged a formal request before the Chambre Nationale de Résolution des Litiges (Algerian NDRC), requesting the termination of the contract due to the player's absences and the payment of compensation in the amount of DZD 10,000,000.
15. On 6 September 2023, the Algerian NDRC rendered a decision stating, inter alia, that the club shall pay to the player, the amount of DZD 2,007,883.62 for the salary of June 2023, as well as declaring that the player is released from any contractual obligation.
16. The player informed FIFA that he remained unemployed.
17. On 03 September 2023, the player lodged a claim before the FIFA Football Tribunal for outstanding remuneration and breach of contract without just cause and requested the payment of the following amounts:
 - Outstanding remuneration, plus 5% interest p.a. as from the relevant payment dates until the date of effective payment, specified as follows:
 - DZD 1,197,023.19 for 11 days of January 2023 gross salary.
 - DZD 3,373,429.25 for May 2023 gross salary.
 - DZD 3,373,429.25 for June 2023 gross salary.
 - DZD 1,849,944.94 for 17 days of August 2023 gross salary.
 - EUR 10,000 as sign-on fee (note: equivalent to approx. DZD 1,351,351.35).
 - DZD 55,498,348.1 as compensation for breach of contract + 5% interest as from 17 August 2023 until the date of effective payment.Total: DZD 66,643,526.08
18. The player explained that he signed two contracts, but that he never received a copy

including the sign-on fee.

19. In its reply, the Respondent argued that, on 27 August 2023, it started an arbitration procedure before the Chambre Nationale de Résolution des Litiges (Algerian NDRC) and noted that the claim of the player before FIFA was lodged afterwards.
20. The club disputed the validity of the player's contract termination for just cause, claiming that the player acted in bad faith.

21. The club asserted it has fulfilled its salary obligations, as follows:

Date	Amount (DA)	Description	
28 March 2023	2,280,000	Salary for February 2023	
12 April 2023	2,280,000	Salary for March 2023	
11 May 2023	2,280,000	Salary for April 2023	Avis de Debit, 11 June 2023
13 June 2023	2,280,000	Salary for May 2023	Payslip dated 29 June 2023
14 August 2023	2,280,000	Salary for July 2023	Statement from the club

22. The club further provided a document ("Avis de Débit") indicating the payment of DZD 2,010,263.62 following the decision of the Algerian NDRC.
23. The club argued that it paid in excess the amount of DZD 408,813.75 to the player.
24. As to the requested sign-on bonuses, the player disputed it is due, as it claimed that it is based on a unilateral and fictitious contract.
25. The club requested compensation for damages related to the player's departure and unjustified absence and, in particular, requested the payment of the following amounts:
 - EUR 12,000 as reimbursement for expenses incurred for the player (tickets and hotel);
 - EUR 20,000 as moral damages.
26. In his replica, the Claimant rejected the position of the club.
27. According to the player, the club is trying to obscure its failures to comply with the employment contract and to present claims without sufficient evidence.
28. The player insisted that he terminated the contract with just cause, citing the club's failure to pay salaries and fulfill its contractual obligations.
29. The player insisted in the jurisdiction of the FIFA Dispute Resolution Chamber in handling this dispute.
30. In its *duplica*, the Respondent insisted that it had fulfilled its contractual obligations, including timely salary payments and except for the final month.

31. The club stated that the player left the team after a training camp.
32. The club also insisted that it followed the legal process before the Algerian NDRC.
33. Salaries had been paid according to the contract, except for the final month.
34. The club contested the validity of the contract as provided by the player

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 3 September 2023 and submitted for decision on 15 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 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 in principle competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Bosnian player and an Algerian club.
3. Finally, 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 3 September 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. In relation to the admissibility of the present matter, the Chamber noted that on 27 August 2023, prior to the present dispute, the club lodged a claim before the *Chambre Nationale de Résolution des Litiges* (Algerian NDRC) requesting the termination of the contract and the payment of compensation by the player. The Algerian NDRC rendered a decision on 6 September 2023, stating that the club shall pay a specific amount to the player and declaring the player's release from any contractual obligation.

6. The Chamber noted that while the club alleged that the present claim was affected by *res judicata*, the player on the contrary insisted on its admissibility in front of the FIFA Dispute Resolution Chamber.
7. In view of the above, the Chamber held that it had to establish whether, considering the general principle of *res judicata*, it could enter the substance of the matter and pass a decision. Accordingly, the Chamber deemed it appropriate to briefly recall that, on the basis of the principle of *res judicata*, a decision-making body is not in a position to deal with the substance of a case in the event that another – competent – deciding body has already dealt with the same matter by passing a final and binding decision.
8. Furthermore, the Chamber made reference to art. 22 par. 1 lit. b) of the RSTP, to the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, to Circular no. 1010 and to its jurisprudence, recalling that a *res iudicata* situation could only be deemed to have occurred if the national body that had previously ruled on a case met the minimum procedural requirements for hearing that case. If the national body concerned is deemed not to guarantee fair proceedings, its rulings do not have to be considered binding.
9. Taking into account all the above, the Chamber noted that, in the case at hand, the Respondent failed to provide evidence that the Algerian NDRC indeed guarantees fair proceedings and respects the principle of equal representation of players and clubs, meeting the requirements established in art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players, detailed in the FIFA Circular no. 1010 as well as in art. 3 par. 1 of the NDRC Regulations. In fact, the Chamber noted from the documentation on file that no evidence was provided of the due notification and participation of the player in the local proceedings; it also noted that the claim was lodged and decided within 10 days. The foregoing is an indication that fair proceedings, where the player's right to be heard was duly respected, might not have been conducted before the Algerian NDRC. Thus, the Chamber decided that the decision of the Algerian NDRC could not be taken into account to assess the existence of *res judicata* in the case at hand.
10. On account of the above, referring to the principle of burden of proof contained in art. 13 par. 5 of the Procedural Rules, and considering that the club did not provide sufficient evidence in relation to the Algerian NDRC, the Chamber established that the Respondent's objection towards the admissibility of the claim before FIFA must be rejected, and that it shall consider the present matter as to the substance.

d. Merits of the dispute

11. The admissibility of the claim 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.
13. The Chamber first understood that the first element to be assessed in the matter at stake is which version of the contract needs to be considered, given that the parties provided different contracts to support the existence of an employment relationship.
14. In particular, the Chamber noted that the player provided a Version 1 of the contract, that is unsigned and provided for a sign-on bonus. Given the lack of signature by either party, the Chamber understood that said version cannot be taken into account. The Chamber acknowledged that said document may indeed have had a precontractual nature or might be considered an initial draft or proposal, but in the absence of signatures or any other material indication that such version of the contract was the one being executed, it is not in a position to establish it as a binding document.
15. Furthermore, the Chamber noted that Versions 2 and 3 of the contract establish similar remuneration, but the Version 3, which was uploaded by the club into TMS, provides a longer period of validity (19 January 2025 instead of 31 December 2024). The Chamber also noted that the club, in its claim before the Algerian NDRC, mentioned Version 3 of the contract as the document at the basis of the parties' employment relationship.
16. Since Version 3 was uploaded by the club into an official FIFA platform, the Chamber understood that this can be seen as an official document provided by the party responsible for drafting the contract. Given the club's intention to register this version of the contract (which is signed by both parties) and its explicit reference to it in the local claim, the Chamber established that Version 3 of the contract should be relied upon, thereby implying a contractual validity until 19 January 2025.
17. As to the facts, the Chamber noted that the player terminated the contract after putting the club in default of payment of the salaries from May to July 2023, as well as to the sign-bonus of EUR 10,000.
18. Conversely, the Chamber observed that the club argued that it duly remunerated the player. However, after examining the documentation on file, the Chamber noted that the evidence provided by the Respondent was contested by the player, who vehemently denied having received the claimed salaries. In this respect, the Chamber considered that the evidence of payment provided by the club – consisting of payment slips not signed by the player and of transfer statements in amounts that do not correspond to the salary contractually agreed, made to an account the player states not to have access to – was not sufficient to establish the actual payment of the amounts claimed.
19. Therefore, based on the information provided and the limitations in the evidence presented by the club, the Chamber concluded that the club has not duly proven that it complied with its contractual obligations of payment.
20. Thus, the Chamber could only assume that, at the date of the termination of the contract by the player (17 August 2023), the salaries from May until said date were outstanding.

21. In relation to said circumstance, the Chamber referred to art. 14bis of the Regulations, which addresses the termination of a contract with just cause specifically in cases of outstanding salaries. In situations where a club unlawfully fails to pay a player at least two monthly salaries on their due dates, the player is considered to have just cause to terminate the contract, provided that he has put the debtor club in default in writing and granted a deadline of at least 15 days for the club to remedy the default. This is what happened in the matter at stake.
22. The Chamber thus established that the player terminated the contract with just cause and that he is entitled to compensation.

ii. Consequences

23. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
24. The Chamber observed that at the date of the termination of the contract (17 August 2023), the salaries from May to August 2023 were outstanding. The Chamber also noted that, while the player indicates in his default notice and in the termination letter that the salary of July 2023 remained unpaid, he does not claim such salary in his claim before FIFA. Based on the foregoing, the Chamber concluded that the amount of DZD 3,373,429.25*3 = 10,120,287.75, as full salaries for the months of May, June and August 2023 as well as DZD 1,197,023.19 for 11 days of January 2023 is outstanding. The Chamber deemed it appropriate to explain that the salary of August 2023 is granted as outstanding remuneration, as the contract was executed for more than half of the month.
25. 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 amounts which were outstanding under the contract at the moment of the termination, i.e. DZD 11,317,310.94 (i.e. 10,120,287.75 + 1,197,023.19).
26. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from the due dates until the date of effective payment.
27. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
28. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties

had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

29. As a consequence, the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
30. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. In particular, the Chamber noted that, from September 2023 until 19 January 2025, the player would earn $3,373,429.25 \times 16.61 = \text{DZD } 56,032,659.84$.
31. Consequently, the Chamber concluded that the amount of DZD 56,032,659.84 serves as the basis for the determination of the amount of compensation for breach of contract.
32. In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages. However, the Chamber observed that the player remained unemployed.
33. At this stage, the Chamber noted the total amount claimed by the player is DZD 66,643,526.08 while, at this stage, the amounts awarded to the player (outstanding + compensation) amount to DZD 67,349,970.78 (DZD 11,317,310.94 + DZD 56,032,659.84).
34. In accordance with the legal principle of *non ultra petita*, which establishes that a decision should not exceed the claims made by the parties involved, a readjustment of the compensation is necessary, in order to reconcile the awarded amount with the initially claimed sum of DZD 66,643,526.08. To achieve this alignment, the Chamber noted that it is necessary to reduce the compensation in such a manner that the final awarded amount precisely matches the player's total claimed sum. Hence, the Chamber recalculated said compensation by subtracting the outstanding amount of DZD 11,317,310.94 from the initially claimed sum of DZD 66,643,526.08, resulting in a final compensation of DZD 55,326,215.14.
35. Thus, the Chamber established that the final amount of DZD 55,326,215.14 shall be awarded as compensation, which was considered a reasonable and justified amount of compensation for breach of contract in the present matter.

36. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% p.a. as of 17 August 2023 until the date of effective payment.

iii. Compliance with monetary decisions

37. 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.
38. 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.
39. 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.
40. 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.
41. 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.

e. Costs

42. 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.
43. 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.
44. 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, Semir Smajlagic, is admissible.
2. The claim of the Claimant, Semir Smajlagic, is partially accepted.
3. The Respondent, JS Kabylie, must pay to the Claimant the following amounts:
 - **DZD 11,317,310.94 as outstanding remuneration** plus interest *p.a.* as follows:
 - 5% interest *p.a.* over the amount DZD 1,197,023.19 of as from 1 February 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount DZD 3,373,429,25 of as from 1 June 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount DZD 3,373,429,25 of as from 1 July 2023 until the date of effective payment;
 - 5% interest *p.a.* over the amount DZD 3,373,429,25 of as from 1 September 2023 until the date of effective payment.
 - **DZD 55,326,215.14 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 17 August 2023 until the date of effective payment.
4. Any further claims of the Claimant are rejected.
5. The counterclaim of JS Kabylie is rejected.
6. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
7. 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.
8. 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.
9. 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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