

Decision of the Dispute Resolution Chamber

passed on 10 November 2023

regarding an employment-related dispute concerning
the player Amadou Tidiane Diallo

BY:

Alexandra Gomez Bruinewoud, Uruguay & the Netherlands

CLAIMANT:

Amadou Tidiane Diallo, France

Represented by Danielle Babin

RESPONDENT:

Clubul Sportiv Mioveni, Romania

Represented by Diaconu Silviu Constantin

I. Facts of the case

1. On 15 January 2023, the French player, Amadou Tidiane Diallo (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 2023 (hereinafter: *the Contract*).
2. Under clause 4 of the Contract, the club undertook to pay to the player the following amounts:
 - EUR 4,800 net as monthly salary; and
 - EUR 4,500 net as sign-on fee.

3. Clause 11 of the Contract reads as follows:

“XI. APPLICABLE LAW

This Agreement will be governed and interpreted according to the Law of physical education and sports no. 69/2000, to the Civil Code, to the Regulation on the Status and Transfer of Football Players, to the Law 227/2015 regarding the Fiscal Code and to the Regulations of FRF and FIFA.

The conflicts related to the execution, performance, modification, suspension or termination of this Agreement will be solved in the following order of proceedings:

- *amicably;*
- *as litigations, considering that the competence to solve such litigations belongs to the arbitration courts of sports, that is the competent committees of FRF and/ or LPF, depending on the case, and TAS, excepting those that belong exclusively to the competence of the courts of law, under the law. (FIFA Football Tribunal (sic), pursuant RSTP of FIFA and Appeal to CAS)“.*

4. On 11 May 2023, the player put the club in default of payment of EUR 14,100 net, corresponding to his sign-on fee and the salaries from March and April 2023 under the Contract. The player granted the club a 15 days’ deadline in order to remedy the breach under penalty of termination in line with art. 14bis of the FIFA Regulations on the Status and Transfer of Players (RSTP).
5. On 1 June 2023, and absent any reply from the club, the player notified it of the termination of the Contract due to overdue payables.
6. On 14 June 2023, the club submitted a request to open insolvency proceedings (*“preventive concordat“*) before the national courts in Romania.

7. 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*).
8. On 7 August 2023, the Administrator submitted a restructuring plan for the club and *inter alia* listed the player as creditor of RON 25,000.
9. The player confirmed that he remained unemployed following the termination of the Contract.

II. Proceedings before FIFA

10. On 25 September 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

11. In his claim, the player explained that he terminated the Contract with just cause based on art. 14bis of the FIFA RSTP. Consequently, the player requested to be awarded the total amount of EUR 18,900 net, broken down as follows:

- EUR 4,500 as sign-on fee plus 5% interest as from 31 January 2023;
- EUR 4,800 as the salary of April 2023 plus 5% interest as from 30 April 2023;
- EUR 4,800 as the salary of May 2023 plus 5% interest as from 31 May 2023; and
- EUR 4,800 as the salary of June 2023 plus 5% interest as from 30 June 2023.

b. Position of the club

12. On 22 October 2023, the club filed its reply to the claim.
13. In its reply, the club challenged FIFA's jurisdiction based on the following reasons:
 - The club is undergoing a specific procedure of insolvency ("*preventive concordat*") under the national law. As such, 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; and
 - The parties included a jurisdiction clause referring to the National Dispute Resolution Chamber of the Romanian Football Federation (FRF) / Professional Football League (PFL) (hereinafter: *the Romanian NDRC*) and such body complies with FIFA's requirements on composition, independence, and fair proceedings.

14. 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 25 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

15. 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 25 September 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.
16. 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.
17. Notwithstanding the above, the Single Judge acknowledged that the club challenged the jurisdiction of the Football Tribunal to deal with the matter at hand as follows:
- a) Due to the ongoing procedure of insolvency (*“preventive concordat”*), the exclusive competence over this dispute lies with national courts of Romania; and
 - b) Alternatively, pursuant to clause 11 of the Contract, in that the Romanian NDRC is exclusively competent to hear the dispute.

18. 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.
19. 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*.
20. Consequently, the Single Judge decided that the club's position in this respect should be dismissed.
21. Thereafter, the Single Judge turned her attention to the analysis of the wording of clause 11 of the Contract in light of the club's allegations concerning the exclusive jurisdiction of the Romanian NDRC. For ease of reference, she recalled that such clause reads as follows:

"XI. APPLICABLE LAW

This Agreement will be governed and interpreted according to the Law of physical education and sports no. 69/2000, to the Civil Code, to the Regulation on the Status and Transfer of Football Players, to the Law 227/2015 regarding the Fiscal Code and to the Regulations of FRF and FIFA.

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- *amicably;*
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22. Having carefully analysed the abovementioned provision, the Single Judge observed that it refers to the national courts, to the committees of the FRF and PFL, as well as, in the end, to the FIFA Football Tribunal and the Court of Arbitration for Sport (CAS).
23. While considering the above together with the club's contradictory submissions regarding the competence of the national courts and/or the Romanian NDRC, the Single Judge concluded that it could not be established with sufficiently clarity which of the referred decision-making bodies, if any, would be competent to hear the present dispute.

24. In conclusion, the Single Judge firmly decided that the Contract does not bear a clear and unequivocal jurisdiction clause in favour of national bodies. It followed, in her view, that FIFA should be competent to deal with the matter at hand in line with art. 22, par. 1, lit. b) of the FIFA RSTP.
25. 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

26. 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

27. 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

28. The foregoing having been established, the Single Judge moved to the substance of the matter, and noted that it pertains to a claim for breach of contract lodged by the player against the club on the basis of the Contract.
29. In particular, the Single Judge took due consideration that the player prematurely terminated the Contract on 1 June 2023, claiming just cause to do so due to overdue payables. In support of his argumentation, the Single Judge observed that the player filed evidence of having more than two salaries outstanding and having put the club in default and granted a reasonable deadline (*i.e.*, 15 days) to cure the financial breach, to no avail. By the same token, the Single Judge acknowledged that such conditions – and the outlines of the termination as a whole – were not disputed by the club, therefore being tacitly accepted.

30. In line with the express wording of art. 14bis of the Regulations, the Single Judge thus decided that the persistent and substantial non-compliance of the contractual obligations by the club could justify the unilateral termination of the Contract, as well as it could hold the club liable for breach of contract.
31. In conclusion, the Single Judge established that the player terminated the Contract with just cause; and the club should be liable to the consequences that follow.

ii. Consequences

32. Having stated the above, the Single Judge turned to the question of the consequences of such unjustified breach of contract committed by the club.
33. First of all, and in accordance with the general legal principle of *pacta sunt servanda*, the the Single Judge decided that the club should be liable to pay to the player the amounts which were outstanding under the Contract at the moment of the termination, namely the sign-on fee and the salaries from April and May 2023.
34. In addition, taking into consideration the player's request as well as the constant practice of the DRC in this regard, the Single Judge decided to award the player interest at the rate of 5% *p.a.* on the outstanding amounts as from the respective due dates until the date of effective payment, as follows:
 - EUR 4,500 net as sign-on fee plus 5% interest as from 31 January 2023. The Single Judge clarified, in this respect, that the player would in principle be entitled to interest as from the date of signature of the Contract (*i.e.*, 15 January 2023), however, as he expressly mentioned 31 January 2023 as the triggering date, she considered that he should be awarded as claimed in order not to rule *ultra petita*;
 - EUR 4,800 net as the salary of April 2023 plus 5% interest as from 1 May 2023; and
 - EUR 4,800 net as the salary of May 2023 plus 5% interest as from 1 June 2023.
35. Having stated the above, the Single Judge moved to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Single Judge 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.

36. In application of the relevant provision, the Single Judge held that it first of all had to clarify as to whether the 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 Single Judge established that no such compensation clause was included in the Contract.
37. As a consequence, the Single Judge 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 Single Judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
38. Bearing in mind the foregoing as well as the claim of the player, the Single Judge 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. Consequently, the Single Judge concluded that the amount of EUR 4,800 net (*i.e.*, the salary of June 2023) serves as the basis for the determination of the amount of compensation for breach of contract.
39. In continuation, the Single Judge 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.
40. Indeed, the Single Judge noted that the player did not find an employment after the termination of the Contract, hence no mitigation was applicable. Likewise, she outlined that no additional compensation should be awarded in the case at hand *cf.* art. 17 par. 1 lit. ii) of the Regulations.
41. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Single Judge decided that the club must pay the amount of EUR 4,800 net to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
42. Lastly, taking into consideration the player's request as well as the constant practice of the DRC in this regard, the Single Judge decided to award the player interest on said compensation at the rate of 5% *p.a.* as of 1 June 2023 until the date of effective payment.

iii. Compliance with monetary decisions

43. 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.

44. 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.
45. 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."*
46. 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.
47. 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.
48. 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 that the player was ever made aware of the insolvency proceedings nor that the club was in fact prevented from delivering any payment.
49. 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.
50. It follows, in the Single Judge's opinion, that art. 24 of the Regulations is applicable to the case at stake.
51. 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.

52. 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.
53. 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

54. 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.
55. 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.
56. 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

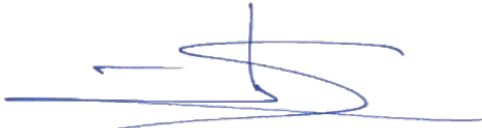
1. The Football Tribunal has jurisdiction to hear the claim of the Claimant, Amadou Tidiane Diallo.
2. The claim of the Claimant is partially accepted.
3. The Respondent, CS Mioveni, must pay to the Claimant the following amount(s):
 - **EUR 4,500 net as outstanding remuneration** plus 5% interest *p.a.* as from 31 January 2023 until the date of effective payment;
 - **EUR 4,800 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 May 2023 until the date of effective payment;
 - **EUR 4,800 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 June 2023 until the date of effective payment; and
 - **EUR 4,800 net as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 1 June 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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