

# Decision of the Dispute Resolution Chamber

passed on 12 October 2023

regarding an employment-related dispute concerning  
the player **Alberto Toril Domingo**

**BY:**

**Clifford J. Hendel (USA/France)**, Deputy Chairperson  
**Alejandro Atilio Taraborrelli (Argentina)**, Member  
**Michele Colucci (Italy)**, Member

**CLAIMANT:**

**Alberto Toril Domingo, Spain**  
Represented by Kirill Shmarov

**RESPONDENT:**

**1207 GKS Piast Gliwice S.A., Poland**

## I. Facts of the case

1. On 2 June 2021, the Spanish player Toril Domingo Alberto (hereinafter the *Claimant* or the *Player*) and the Polish club 1207 GKS Piast Gliwice S.A. (hereinafter the *Respondent* or the *Club*) concluded employment agreement (hereinafter the *Employment Agreement*), valid until 30 June 2024.
2. In accordance with Clause V of the Employment Agreement, the Claimant and the Respondent (jointly referred to as the *Parties*) agreed upon, *inter alia*, the following financial benefits:
  - Season 2021/2022:  
*"In the period from 01.07.2023 to 30.06.2024, on account of the provided service, the Player is entitled to monthly basic remuneration in the amount of 53.000,00 PLN gross (in words: sixty three thousands zloty) including VAT tax due."*
  - Season 2022/2023:  
*"In the period from 01.07.2023 to 30.06.2024, on account of the provided service, the Player is entitled to monthly basic remuneration in the amount of 58.000,00 PLN gross (in words: sixty three thousands zloty) including VAT tax due."*
  - Season 2023/2024:  
*"In the period from 01.07.2023 to 30.06.2024, on account of the provided service, the Player is entitled to monthly basic remuneration in the amount of 63.000,00 PLN gross (in words: sixty three thousands zloty) including VAT tax due."*
3. In accordance with Clause XIV of the Employment Agreement, the Parties agreed upon the following jurisdiction clause:  
*"If an action is brought by a Player, he is entitled to choose the PZPN Arbitration Court or the FIFA Disciplinary bodies."*
4. In accordance with the employment contract, the Respondent undertook to pay to the Claimant On 23 January 2023, the Respondent sent the following notice to the Agent of the Claimant:  
*"We as a football club **Gliwicki Klub Sportowy „PIAST” S.A.** seated in Gliwice, ul. Okrzei 20 are interested in the loan of our player **Alberto Toril** (01.06.1997) until the end of the 2022/2023 season.  
At the end of the period of loan at Real Murcia until 30.6.2023, along with the following holiday period, **Alberto Toril will return to training solely with the first team of Gliwicki Klub Sportowy “PIAST” S.A without the option of permanently moving the player to the second team.**  
In case of successful medical tests at the new club, we undertake to pay the commission."*

5. On 12 June 2023, the Respondent sent the following notice to the Claimant:

*“We as a football club **Gliwicki Klub Sportowy „PIAST” S.A.** seated in Gliwice, ul. Okrzei 20 inform that **Alberto Toril** (01.06.1997) has been given a free rein to look for a club. The club is also considering the possibility of a free transfer or termination of the contract. The player is not required to attend a team training sessions due to his loan to another club, which is valid until 30.06.2023. After discussion, it was agreed with the first coach that the player cannot expect to play and train with the first team.”*
6. On 19 and 21 June, the Respondent sent notices to the Claimant (and two of his teammates), that they are temporarily transferred to the second team.
7. On 21, 27, 30 June and 6 July 2023, the Claimant requested to be reinstated with the first team, specifically asking to be informed about how he can fulfill his obligations under the contract.
8. On 26 June 2023, the Respondent sent the following letter to the Claimant:

*“Gliwicki Klub Sportowy ‘Piaśt’ SA would to inform your Agency that after your loan period in Real Murcia (till 30.06.2023) you have free time (without trainings with our Club) till 16.07.2023. Our Club give You a permission to find another Club to next season. Otherwise if you would to still be a part of Piaśt Gliwice your training with second senior’s Club team will start his trainings on.17.07.2023.”*
9. On 27 June 2023, the Respondent sent the following letter to the Claimant:

*“Gliwicki Klub Sportowy ‘Piaśt’ SA would to inform your Agency that in the day when the Player Alberto Toril will find new Club for season 2023/2024 or resolve the Contract on mutual agreement with our Club we will settle the arrears related to the commission you are entitled to.”*
10. Until 30 June 2023, the Claimant was on loan with Real Murcia CF.
11. On 7 July 2023, the Respondent sent the following letter to the Claimant:

*“(…) From July 17, 2023, you can start training with the second team of the Club. You are not obliged to appear at the Club before this date. At the same time, the Club confirms that it is open to a proposal to your transfer to another club or to termination by mutual consent of the parties of the contract for professional football of June 7, 2021 (hereinafter referred to as the Contract). Of course, if you are interested in such a solution. Regarding your claims that your contractual rights are being violated, these claims are completely unsubstantiated. First of all, the Club has no intention of terminating the Contract with you unilaterally. Secondly, the Club indicated to you when and under what conditions you can take up further training with the second team of the Club. However, the Contract*

*does not give you any rights to play and train only with the first team of the Club. On the contrary, in accordance with point II.2.a) of the Contract, you are obliged to play in all teams to which Club delegates you. Therefore, it is solely up to the Club whether it delegates you to play in the 1st team or in the 2nd team of the Club.*

*In connection with the above, the Club is of the opinion that it does not violate the Contract in any way, and you are also obliged to play in the second team of the Club.”*

12. On 17 July 2023 the Player started his trainings with the second team of the Respondent.
13. In correspondence of 20 July 2023, the Claimant reiterated that he wishes to be under the contract, granting the Respondent 10 days to comply with its obligations.
14. At the beginning of the new season 2023/2024, the Claimant was allegedly excluded from all team events. Furthermore, he was taken out of the first team’s WhatsApp chat as well as first team’s photos in the Club’s social networks, the Club’s website and in the application of the first team in «PKO Ekstraklasa» for the season 2023-2024.
15. On 31 July 2023, the Claimant sent his final default notice, requesting as follows:

*“I’m asking for the last time the Club stop violating the provisions of the FIFA Regulations and the Contract, and return the Player to the first team, what was guarantee to him by the letter on 23 January, 2023 and by the Contract. Besides that, I insistently ask the Club stop long-term discriminatory actions against the Player, jeopardizing the development of his sports potential and career, which seriously violates his legitimate rights and interests.”*
16. On 2 August 2023, the Respondent recognized its debt towards the Claimant from the previous season 2022/2023 in the total amount of PLN 11,685.
17. On 9 August 2023, the Claimant terminated the Employment Agreement with the Respondent.
18. On 10 and 11 August 2023, the Respondent rejected the validity of the termination and requested the Claimant to return to the club. Furthermore, the Respondent followed up with the Claimant by various correspondences, pointing out that the player does not attend the trainings.
19. On 21 August 2023, the Respondent pointed out to the Claimant’s absences and terminated the contract with the following notice:

*“At the same time, I explain that the reason for the termination is your absence at training on 8, 9, 10, 11, 14, 17 and 18 August 2023, as well as absences at matches on 12, 15 and 19 August 2023. You have not justified absences at these trainings and matches to this day in any way. According to Art. 8 points 4 lit. d. of the Resolution, a three-time absence from training, which is not justified in writing within 7 days from the date of this absence, is the basis for the unilateral termination of the Contract by the Club. In view of the above, and also*

*due to the fact that you were previously called by the Club to properly perform the Contract, and yet you violated its terms, this termination is justified."*

20. On the same day, the Respondent requested a payment of penalties due to the alleged absence.
21. Allegedly, on 28 August 2023, the Respondent filed a claim at the Polish NDRC for the payment of the above-mentioned contractual penalties.
22. On 14 August 2023, the Claimant signed a new employment contract with the Spanish club, Cordoba CF, valid as from 30 June 2023 until 30 June 2025.
23. For the relevant (overlapping) season 2023/2024, the Claimant is entitled to remuneration of EUR 110,000.

## **II. Proceedings before FIFA**

24. On 17 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**

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

- "1. Confirm the fact that the Respondent significantly violated the Contract and the Claimant terminated the contract with just cause.*
- 2. Oblige the Respondent to pay to the Claimant the salary and additional rewards debt according to the Contract in the total amount of in total amount of 92.985,00 PLN.*
- 3. Oblige the Respondent to pay to the Claimant compensation for early termination of the Contract with just cause until the end of the Contract in accordance with par. ii clause 2 article 17 of the RSTP in total amount of 693.000,00 PLN.*
- 4. Oblige the Respondent to pay to the Claimant the 5% annual interest rate for the period from the date of payment in accordance with the terms of the Contract to the date of actual repayment of the debt.*
- 5. Apply sanctions to the Respondent in a form of a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods."*

26. The Claimant based its claim on art. 14 of the Regulations as he argued that *"the Club has grossly violated legitimate and fundamental rights and interests of the Player, tried with all his might to remove the Player from the Club without any compensation and terminate or change the terms of the Contract via such abusive conduct and discrimination."*

27. The Claimant provided the following break-down:

- Outstanding:  
*“Before going on loan, the Club had no debts. However, following the results of the 22/23 season, the Club remained in debt to 11.685,00 PLN (additional rewards) and after repeated written appeals, the specified debt was not paid. Besides that, by 29 August 2023, the Club had not paid any amount to the Player under the 23/24 contact’s season (i.e., 81.290,00 PLN – the salary for the period from 1 July to 9 August 2023).”*
- Compensation: PLN 693,000 as per art. 17 of the Regulations

#### **b. Position of the Respondent**

28. In its reply to the claim, the Respondent requested the following:

- *“establishing that the unilateral termination of the contract for professional football playing from 7 June 2021 by the Claimant was groundless and ineffective,*
- *dismissal of the Claimant claim for amount of 92.985,00 PLN in connection to remuneration and additional awards*
- *dismissal of the Claimant claim for amount of 693.000,00 PLN as compensation for early termination of the contract.”*

29. The Respondent argued that the Claimant was on loan to Club Real Murcia from 23 January 2023 until 30 June 2023, during which the performance of the Claimant was duly reviewed. In this respect, and for sporting reasons, the Respondent argued that the Claimant was temporary transferred to the second team and that *“it should be emphasized that the Claimant claims that he was transferred to the second team without any training goals and assumptions are false.”*

30. The Respondent argued that the termination by the Claimant on 9 August 2023 was not effective and that the player was supposed to comply with its contractual obligations, but that he failed to do so.

31. In view of the above, the Respondent argued that it terminated the contract on 21 August 2023 with just cause.

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

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

32. 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 17 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.

33. 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 Spanish player and a Polish club.
34. 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 17 August 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**

35. 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**

36. 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**

37. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that this is a claim of a player against a club concerning a termination of the employment relationship.

38. The DRC further noted that the Claimant argued that he terminated the contract with just cause on 9 August 2023 due to his demotion to the second team. On the other hand, the Chamber acknowledged the argument of the Respondent that such termination by the Player was not effective and that the latter was expected to fulfil his contractual obligations. The Respondent continued that since the Claimant, however, did not comply with his obligations, the Respondent itself terminated the contract with just cause on 21 August 2023.
39. In this context, the Chamber firstly determined that the employment agreement was terminated by the Player on 9 August 2023 and acknowledged that the crux of the dispute lies in the assessment of such termination. In particular, the DRC acknowledged that their task is to decide if such termination was with just cause, based on art. 14 of the Regulations.
40. First of all, the DRC referred to the content of art. 14 of the Regulations, which provides that *"a contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*.
41. In this context, the Chamber recalled its longstanding and well-established jurisprudence that only a breach or misconduct which is of a certain severity justifies the termination of a contract, i.e. only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to ensure the employee's fulfilment of his contractual duties, and *vice versa*, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an *ultima ratio* measure.
42. The Chamber further recalled that the definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case and highlighted the key questions to consider when assessing whether separating a player from the first team constitutes abusive conduct:
- *Why was the player sent to the second team?*  
In this regard, the DRC noted that the Player was allegedly sent to the second team for sporting performance.
  - *When was the measure implemented? Was it imposed while (official) matches were being played?*  
The DRC noted that the measure was implemented from the beginning of the season. Furthermore, the members found that there was evidence on file that the Player was excluded from the official events / lists / website of the Club.



- *Was the player still being paid their full salary and remuneration?*  
The Chamber further acknowledged that that salary of July and August remained unpaid since the Respondent did not submit any proofs of payment. On the other hand, the DRC recalled that the Claimant did not send a default notice requesting outstanding salaries.
  - *Was it a permanent or temporary measure?*  
The members of the Chamber highlighted that none of the notices of the Respondent defined the period of the measure.
  - *Did the contract between the club and the player expressly guarantee the player the right to only play and train for the first team?*  
The DRC noted that the Contract between the Parties is called a “Professional Football Player Contract”. Furthermore, the Chamber stressed that in the letter of 23 January 2023, the Respondent stipulated that: *“Alberto Toril will return to training solely with the first team of Gliwicki Klub Sportowy “PIAST” S.A without the option of permanently moving the player to the second team.”*
  - *Was the player training alone or with a team?*  
Finally, the members of the Chamber took note that it remained uncontested that the Player was training with a team.
43. The Chamber also duly noted that the Claimant expressly requested to be reinstated to the first team several times. On the other hand, considering the evidence on file, i.e. the communication sent by the Respondent, its will to terminate the employment relationship as well as the non-inclusion of the Player in the relevant events of the new season, the Chamber was of the opinion that Club wished to get rid of the Player.
44. Pointing out to all of the above, in particular that the Player was supposed to return to the Respondent’s first team and that no appropriate explanation was given regarding the duration of the measure nor any prospects of the Claimant, the Chamber concluded that the Player terminated the employment contract with just cause.

## ii. Consequences

45. 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.
46. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, amounts to PLN 74,685, which consist of an acknowledged debt of PLN 11,685 and a salary of July 2023 of PLN 63,000.

47. 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. PLN 74,685.
48. 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 over the outstanding amounts as follows:
- PLN 63,000 plus 5% interest p.a. as from 1 August 2023 until the date of the effective payment.
  - PLN 11,685 plus 5% interest p.a. as from 2 August 2023 until the date of the effective payment.
49. 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.
50. 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.
51. As a consequence, the members of 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.
52. 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. Consequently, the Chamber concluded that the amount of PLN 693,000 (August 2023 – June 2024) serves as the basis for the determination of the amount of compensation for breach of contract.

53. 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.
54. Indeed, the player found employment with Cordoba CF. In accordance with the pertinent employment contract, the Player was entitled to EUR 110,000 for the relevant (overlapping) season 2023/2024. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of EUR 110,000, which corresponds to PLN 488,767 as per 9 August 2023.
55. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Club must pay the amount of PLN 204,233 to the Player (i.e. PLN 693,000 minus PLN 488,767), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
56. 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 9 August 2023 until the date of effective payment.

### iii. Compliance with monetary decisions

57. 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.
58. 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.
59. 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.

60. 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.
61. 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.

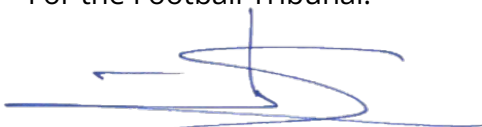
#### **d. Costs**

62. 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.
63. 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.
64. 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, Alberto Toril Domingo, is partially accepted.
2. The Respondent, 1207 GKS Piast Gliwice S.A., must pay to the Claimant the following amount(s):
  - **PLN 63,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 August 2023 until the date of effective payment;
  - **PLN 11,685 as outstanding amount** plus 5% interest *p.a.* as from 2 August 2023 until the date of effective payment;
  - **PLN 204,233 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 9 August 2023 until the date of effective payment.
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

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**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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