

Decision of the Dispute Resolution Chamber

passed on 23 October 2023

regarding an employment-related dispute concerning the player
Gyliano van Velzen

BY:

Philippe DIALLO (France)

CLAIMANT:

Gyliano van Velzen, Netherlands

RESPONDENT:

Pegeia 2014, Cyprus

I. Facts of the case

1. On 16 August 2022, the player Gyliano van Velzen and the Cypriot club PEGEIA 2014 concluded an employment contract valid as from the date of signature until 31 May 2023.
2. According to art. 1.3 of the contract, the player was entitled to a monthly salary of EUR 1,700 net (EUR 1,886.15 gross). The contract indicated that *"All taxes payable to the Tax Department, as per the applicable legislation, shall be paid by the Club."*
3. In addition, the player was entitled to the following benefits and allowances:
 - Accomodation.
 - 2 shared cars from the team for all the players
 - 1 fly ticket with return for this season.
4. On 24 April 2023, the club sent the following correspondence to the player:
*"About your request to go b.1ck in your country before the last game and before your expired date of your contract, as PEYIA 2014 F.C. and as a committee after our meeting today at 18:30, we took a new decision and we deny the first one which president told you in the WhatsApp at 15:31 and we don't allow you to leave the country before the last game which is on 30th of April 2023 and before the last date of your contract which is on 31/05/2023.
Also, you have not paid yet all your utility bills of your accommodation and also the damages on the car and you have to do it soon in the next days."*
5. On 1 May 2023, the club sent a letter to the player, informing him that he "illegal[y] disappeared from the trainings" and granted 2 days before receiving a penalty.
6. On 5 May 2023, the club sent a new letter indicating that "from today we have the right to put any penalty on you or to break our contract agreement"
7. On 18 May 2023, the club sent a letter to the club, indicating that he must pay the utility bills of his apartment (electricity, water and internet) for a total amount of EUR 1,407 as well as damages in apartment (EUR 100). The club also indicated that the player "burned the engine of the car" that was provided to him, noting that the valuation of the car is approx. EUR 2,500. The club further indicated that a fine of EUR 500 was imposed against him and that, as a result, his salary of April 2023 had to be deducted. The club granted 5 days to the player to present his objections.
8. On 12 May 2023, the club sent another letter indicating the following:

“We decide to fine all of the squad for disciplinary measure and in order to deter all of you from engaging in undesirable conduct and to ensure that you will receive punishment for your actions.

Following all the above, the Board decide to withhold one monthly salary for every on and each of you as a fine.

If someone disagrees with the above fine, he has the right to appeal on the above decision by submitting a formal grievance to the club no later than 5 days after the receivable of the present.”

9. On 24 May 2023, the player (via the Dutch Player’s Union) sent a default notice to the club requested the payment of EUR 1,700 for his salary of April 2023, while rejected the arguments of the club in relation to the utility costs, the accommodation, the car damages as well as the fine of EUR 500.
10. On 1 June 2023, the club wrote the player (via the Dutch Player’s Union), while noted that the player *“does not respect that he has caused us much more financial damage than his last monthly wage, but he also has the audacity to asking us to pay him on top of that.”*
11. The player replied on 8 June 2023 and denied the club’s accusations.
12. On 13 June 2023, the club sent a new correspondence and indicated that the player is *“free to claim any amount at the DRC or at any other authority”*.

II. Proceedings before FIFA

13. On 27 July 2023, the player lodged a claim before the FIFA Football Tribunal for outstanding remuneration and requested the payment of EUR 1,700 net, corresponding to his salary of April 2023, plus 5% interest p.a. as from the due date.
14. The player argued that the club is refusing to pay his last salary for the month of April 2023, due to alleged poor performance and misconduct, and denied said accusations.
15. The player further indicated that the club wanted to pass on the cost of electricity, water, and internet, even though the contract does not state that these costs are to be borne by him.
16. The player explained that the club is also trying charge him for damage to the accommodation and the car provided by the latter, but argued that the club has not provided any evidence of the damage.
17. The player also indicated that the club imposed a fine on him for allegedly leaving Cyprus early, even though he obtained permission to leave and is entitled to take holidays.
18. The club replied to the claim and simultaneously lodged a counterclaim against the player.
19. The club stated that the player breached his contractual obligations and caused a financial damage that amounts to EUR 4.507,11.
20. In addition, the club explained that a fine of EUR 500 was imposed for his unjustified absent before the last match of the sporting season.
21. Furthermore, the club explained that the car it provided by the player was damaged, with repair costs of EUR 2,500.
22. As a result, the club considered that the player shall be ordered to pay EUR 2,807.11 (i.e. EUR 1,700 – 4,507.11)
23. In his *replica*, the Claimant contested the evidence provided by the club.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

1. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *Single Judge* or *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 27 July 2023 and submitted for decision on 11 October 2023. Taking into account the wording of art. 34 of the October 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 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 Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Dutch player and a Cypriot club.
3. 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 27 July 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 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 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

5. 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 he 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

6. The foregoing having been established, the Single Judge moved to the substance of the matter.
7. In this context, the Judge first noted that the case at hand concerns alleged outstanding remuneration, corresponding to the player's salary for April 2023.
8. In this respect, the Judge noted the club acknowledges its debts for said month of April 2023, but emphasized that the player is indebted with EUR 4,507.11 to the club noting, in particular, that a fine of EUR 500 was imposed for his unjustified absence before the last match of the season.
9. In relation to said fine, the Judge wished to refer to the longstanding jurisprudence of the Football Tribunal, which unequivocally prohibits a club from offsetting its debts (notably, the payment of a player's remuneration) by imposing various fines.
10. Furthermore, the Judge noted that the club failed to furnish substantiating evidence to support its contentions as to the player's alleged absences.
11. In addition, the Judge viewed that the club has not provided any evidence to show that the player was given a fair opportunity to be heard nor participated in relevant proceedings. Therefore, the Judge decided to disregard the fine, which, in any case, cannot be used as an instrument to offset the player's remuneration.
12. Subsequently, the Judge also observed that, according to player, the club wanted to pass on the cost of electricity, water, and internet, even though the contract does not state that these costs are to be borne by him.
13. In relation to said issue, the Judge reflected that, according to the contract, the club committed to provide the player with "accommodation".
14. Regarding this provision of "accommodation" in the player's contract, it is the Judge's perspective that if the club provides accommodation, it is reasonable to infer that the club should also cover the associated utilities. Indeed, following the Judge, if the club is providing the player with accommodation, then it is reasonable to expect that the club would also cover the utilities and, if that was not the case, it should have been specified in the contract. Moreover, the Judge noted that club has not provided any explanation for why it believes that the player is responsible for paying the utilities. In addition, the Judge also observed club has not provided any official invoices or receipts for the utility bills.

15. Concerning any purported damages to the accommodation, the Judge also observed that the club has not adequately demonstrated that the player is liable for causing them. In such cases, damages should be addressed in consultation with the relevant insurer.
16. The Judge also observed that the club asserted that the player causes significant damages to the car it provided to him.
17. As for said alleged damages, it was the Judge's view that if the club believes that the player caused damage to the car, then it should file a claim with the relevant insurance company. In that case, only the insurance company would be responsible to determine whether or not the player is liable for the damages. Thus, under no circumstance the club can deduct the cost of the car damages from the player's salary.
18. All in all, the Judge understood that the club's debt to the player for his salary is a separate matter from the player's alleged debt to the club for utility bills, accommodation, car damages, and a fine. The club is not entitled in any case to unilaterally deduct these amounts from the player's salary.
19. Consequently, for all of the above the player is entitled to receive EUR 1,700 net, corresponding to his salary of April 2023.
20. In addition, in accordance with its longstanding jurisprudence, the Single Judge decided to award 5% interest p.a. over said amount as from the due date.

ii. Compliance with monetary decisions

21. 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.
22. 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.
23. 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.

24. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form,.
25. 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.
26. In continuation, the Single Judge referred to art. 12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
27. To this end, the Single Judge confirmed that the player put the club in default of payment of the amounts sought, which had fallen due more than 30 days before, and granted the club a 10-day deadline to cure such breach of contract.
28. Accordingly, the Single Judge confirmed that the club had delayed a due payment without a prima facie contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
29. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations, they have competence to impose sanctions on the club. On account of the above and bearing in mind that this is the first offense by the club within the last two years, the Single Judge decided to issue a warning to the club in accordance with art. 12bis par. 4 lit. a) of the Regulations.
30. In this connection, the Single Judge highlighted that a repeated offense will be considered as an aggravating circumstance and may lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

d. Costs

31. 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 Single Judge decided that no procedural costs were to be imposed on the parties.
32. 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.

33. 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 claim of the Claimant, Gyliano van Velzen, is accepted.
2. The Respondent, Pegeia 2014, must pay to the Claimant the following amount:
 - **EUR 1,700 net as outstanding remuneration** plus 5% interest *p.a.* as from 1 May 2023 until the date of effective payment.
3. Full payment (including all applicable interest) shall be made to the bank account indicated in the Bank Account Registration Form.
4. 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.
5. 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.
6. This decision is rendered without costs.
7. A **warning** is imposed on the Respondent (art. 12 bis of the Regulations)

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).

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