

Decision of the Dispute Resolution Chamber

passed on 18 April 2024

regarding an employment-related dispute concerning
the player Bojan Saranov

BY:

Martín AULETTA (Argentina), Deputy Chairperson
Roy VERMEER (The Netherlands), member
Khalid AWAD AL-THEBITY (Saudi Arabia), member

CLAIMANT:

Bojan Saranov, Serbia
Represented by Hrvoje Raic

RESPONDENT:

PAS Lamia 1964 FC, Greece

I. Facts of the case

1. On 13 July 2022, the Serbian player Bojan Saranov (hereinafter, the *Claimant* or the *Player*) and the Greek club PAS Lamia 1964 FC (hereinafter, the *Respondent* or the *Club*) concluded employment agreement (hereinafter, the *Contract*) valid as from the date of signature until 30 June 2024.
2. On 31 March 2023, the Claimant and the Respondent (hereinafter, jointly referred to as the *Parties*) concluded the "*Payment Agreement – Settlement of Debt*" by way of which the Respondent undertook to pay to the Claimant the amount of EUR 26,426.90 in different instalments.
3. On 5 April 2024, the Parties concluded the "*Termination of Contract and Settlement of Debt*" (hereinafter, the *Termination Agreement*), according to which "*Today, with the present agreement, the contractual parties agree to terminate prematurely the aforesaid contract of the PLAYER with mutual consent and generally to terminate their employment relationship, subject to the terms and conditions of this agreement*".
4. In accordance with clause 3 of the Termination Agreement, the Respondent undertook to pay to the Claimant the following amounts:

a) *Net 11,000 € (eleven thousand euro) as outstanding remuneration for the period up to 28 February 2023, which is also mentioned in the payment agreement dated 31.3.2023 and which is payable in 2 instalments as follows:*

- *Net 5.500,00 € on 30/04/2023,*
- *Net 5.500,00 € on 31/05/2023.*

b) *Compensation for premature termination of the employment contract of net 108.000,00 € (one hundred and eight thousand euro) payable in 24 equal monthly instalments of net 4,500.00 euros each, payable (each instalment) on the last day of each subsequent month stating with the first payment due on 30/04/2023, and*

c) *Additional compensation of net 60,000.00 € (sixty thousand euro), payable if the PLAYER does not sign a new contract and will not be registered in another club in Greece or abroad by the end of the upcoming summer transfer season, i.e. if the Player is not registered with another football club until 30/09/2023, all in 12 instalments as follows:*

- *Net 5,000.00 € by no later than 30/09/2023, and*
- *Net 5,000.00 € by no later than 30/10/2023, and*
- *Net 5,000.00 € by no later than 30/11/2023, and*
- *Net 5,000.00 € by no later than 30/12/2023, and*
- *Net 5,000.00 € by no later than 30/1/2024, and*

- Net 5,000.00 € by no later than 28/2/2024, and
- Net 5,000.00 € by no later than 30/04/2024, and
- Net 5,000.00 € by no later than 30/06/2024, and
- Net 5,000.00 € by no later than 30/08/2024, and
- Net 5,000.00 € by no later than 30/10/2024, and
- Net 5,000.00 € by no later than 30/11/2024, and
- Net 5,000.00 € by no later than 30/12/2024, and

d) *All applicable taxes and surcharges on top and above the sums stipulated in this agreement and all applicable taxes and surcharges related to all sums arising from the employment of the PLAYER with the CLUB, if still due*".

5. As per clause 6 of the Termination Agreement,

"In case of delay of payment of any three monthly instalments as defined in article 3 above due to any reason, then the CLUB shall also pay the PLAYER, on top of the amounts mentioned therein, a penalty of net 30,000.00 €, which the parties consider fair and reasonable. In such case, the PLAYER shall be obliged to send to the CLUB a written notice granting it 7 days to comply with its obligation and to pay the three instalments which are due, as a condition for the payment of said penalty".

6. On 26 January 2024, the Claimant sent a default notice to the Respondent stating that it had failed to pay the amount of EUR 38,000 net, granting a seven-day deadline to the Respondent to comply with its financial obligations.

II. Proceedings before FIFA

7. On 12 February 2024, 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

8. According to the Claimant, the Respondent was in default of the amount of EUR 38,000 net, corresponding to several instalments of the Termination Agreement.
9. The Claimant further argues that on 26 January 2024 he sent a default notice to the Respondent with a seven-day deadline, to no avail. Consequently, the Claimant asserts that the contractual penalty agreed in clause 6 of the Termination Agreement in the amount of EUR 30,000 net was triggered.
10. The Claimant requested the following relief:

I. To condemn the Respondent to pay in favour of the Claimant outstanding remuneration and penalty of total net EUR 77,500.00, which matured as follows:

- EUR 9,500 net on 30/09/2023*
- EUR 5,000 net on 30/10/2023*
- EUR 4,500 net on 31/10/2023*
- EUR 9,500 net on 30/11/2023*
- EUR 5,000 net on 30/12/2023*
- EUR 4,500 net on 31/12/2023*
- EUR 5,000 net on 30/01/2024*
- EUR 4,500 net on 31/01/2024*
- EUR 30,000 net on 3/02/2024*

Within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

II. To condemn the Respondent to pay all relevant taxes, state contributions and surcharges, on top of the above-mentioned net amounts, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent;

or alternatively

To condemn the Respondent to provide the Claimant with the corresponding tax certificates concerning the payment of all the above specified net amounts alongside all the net amounts already paid to the Claimant during the term of the Employment contract, within 45 days as from the date of notification of the decision in the matter of reference to the Respondent; and

III. To condemn the Respondent to pay in favour of the Claimant default interest of 5% per year on the aforementioned amounts starting from the respective date of maturity until the effective date of payment, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent.

b. Position of the Respondent

11. According to the Respondent, the amounts claimed by the Claimant were incorrect, given that on 27 February 2024 (i.e., after the Claimant lodged his claim) it paid to the Claimant the amount of EUR 22,500.
12. In this regard, the Respondent acknowledged that it owed the Player the amount of EUR 25,000 net.

13. With regard to the contractual penalty claimed by the Claimant, the Respondent argued that it is *“undoubtedly excessive and thus illegal, abusive, and contrary to the principle of proportionality, since the remaining due as remuneration out of the total claimed amount is of EUR 25,000 net”* and that *“the Claimant’s claim regarding the penalty of EUR 30,000 shall be dismissed as abusive, disproportional and immoral”*.
14. The Respondent lastly asserted that in the alternative, the contractual penalty should be reduced *“down to the appropriate level (i.e., half of the amount at maximum)”*.
15. The Respondent requested the following relief:
 - i. To rule that the amount payable by the Respondent to the Claimant as outstanding remuneration is of 25,000 euros net.*
 - ii. To reject the Claimant’s claim for the penalty of 30,000 euros net as groundless and in any case as abusive and illegal.*
 - iii. To reject any other claim and assertion of the Claimant.*
 - iv. Subsidiarily, to rule that the penalty claimed is disproportionate and to bring it down to the appropriate level.*
 - v. To rule that the Claimant shall bear any and all costs of the proceedings.*

c. Final comments of the Claimant

16. On 18 March 2024, the Claimant confirmed having received the amount of EUR 22,500 paid by the Respondent.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

17. First of all, the Dispute Resolution Chamber (hereinafter, also referred to as the *Chamber* or the *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 12 February 2024 and submitted for decision on 18 April 2024. 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.

18. Subsequently, the Chamber referred to art. 2 par. 1 and art. 24 par. 1 lit. a) of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par. 1 lit b) of the Regulations on the Status and Transfer of Players (February 2024) it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Serbian player and a Greek club.
19. 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 (February 2024 edition), and considering that the present claim was lodged on 12 February 2024, the February 2024 edition of said regulations (hereinafter, the *Regulations*) is applicable to the matter at hand and as to the substance.

b. Burden of proof

20. 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

21. 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

22. 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 outstanding amounts arising from the Termination Agreement.
23. To this effect, the Chamber first noted that the Claimant had initially claimed the payment of EUR 47,500 net as outstanding remuneration, as well as EUR 30,000 net as contractual penalty. However, the Claimant confirmed having received EUR 22,500 paid by the Respondent on 27 February 2024.

24. The Chamber also noted that, on the other hand, the Respondent acknowledged being in default for the remaining outstanding amount, i.e., EUR 25,000 net.
25. In view of the foregoing and bearing in mind the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Chamber concluded that the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the Termination Agreement concluded between the Parties, namely, EUR 25,000 net.
26. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amounts as from its respective due dates until the date of effective payment.
27. The above having been established, the Chamber then observed that, on the one hand, the Claimant asserted his entitlement to EUR 30,000 net in accordance with the contractual penalty stipulated in the Termination Agreement and, on the other hand, the Respondent contented that the penalty was excessive and/or abusive and, thus, illegal.
28. In view of the foregoing, the Chamber outlined that the next question to be tackled was whether the contractual penalty was indeed triggered and, in such a case, whether it was excessive.
29. In this respect, the Chamber first recalled that, according to clause 6 of the Termination Agreement, the Parties had agreed upon the applicability of a contractual penalty in the amount of EUR 30,000 net provided that the following two cumulative requirements (or events) were met:
 - (i) Delay of the Respondent in "*any three monthly instalments*" defined in clause 3 of the Termination Agreement; and
 - (ii) The Claimant had to put the Respondent in default and grant it a period of 7 days to comply with its obligations.
30. The Chamber then noted that on 26 January 2024, the Claimant sent a default notice to the Respondent requesting the payment of EUR 38,000 net, corresponding to a total of 8 monthly instalments. The Chamber further noted that the Claimant granted a deadline of 7 days to the Respondent to fulfil his contractual obligations, to no avail.
31. Based on the foregoing, the Chamber concluded that the above-mentioned two requirements were met and, consequently, that the agreed contractual penalty was triggered.

32. The above having been established, the Chamber recalled that the Respondent alleged that the contractual penalty of EUR 30,000 net was undoubtedly excessive, abusive and contrary to the principle of proportionality, and that it considered that its payment should be rejected given that it was groundless and illegal. In the alternative, the Claimant considered that the contractual penalty should be reduced.
33. In this respect, the Chamber recalled that, according to the constant jurisprudence of the Football Tribunal, penalty clauses may be freely entered into by the parties and may be considered acceptable in the event that the pertinent written clause meets certain criteria, such as proportionality and reasonableness. In this regard, in order to determine as to whether a penalty clause is to be considered acceptable, the specific circumstances of the relevant case brought before the Chamber shall be taken into consideration.
34. The Chamber also recalled that the longstanding jurisprudence of the Court of Arbitration for Sport (CAS) has established that *"A penalty is considered abusive when its amount is unreasonable and clearly exceeds the admissible amount in consideration of the principles of justice and equity"*, and that *"Since the possibility of a reduction affects the contractual freedom of parties, it may only be applied with reservation"*. The CAS has also established that *"When analysing the proportionality of a penalty clause, the creditor's interest, the seriousness of the breach of the contract, the debtor's intentional failure, the financial situation of both parties, the economic dependence of the debtor, the disproportion between the damage and the penalty, the debtor's professional background, and not only the damage actually produced but also the risk of damage to which the creditor has exposed, are to be considered relevant"* (*inter alia*, CAS 2021/A/7727 Yeni Malatyaspor FK v. Issiar Dia).
35. The Chamber then turned its attention to the wording of the contractual penalty in clause 6 of the Termination Agreement, and concluded that the common intention of the Parties was that the contractual penalty would trigger every time (i) the Respondent failed to pay *"any three monthly instalments"* and (ii) the Claimant granted a deadline of 7 days for the Respondent to comply with its obligations.
36. In other words, the Chamber noted that the common intention of the Parties was that the contractual penalty would sanction every delay (i.e., not only the first one) provided that the two above-mentioned requirements were met. In this regard, it appears it could not be the intention of the Parties to punish only the first delay of the Respondent since, in this scenario, potential subsequent delays from the Respondent would not be punished (or sanctioned) with any further consequences apart from the relevant interest for late payment.
37. In this respect, after having established that the contractual penalty is triggered every time there are three monthly instalments due and provided that a 7-day deadline has been granted by the Claimant, the Chamber, by majority, concluded that, *in casu*, a contractual penalty in the amount of EUR 30,000 is excessive in comparison with the outstanding amount.

38. For the sake of clarity, the Chamber underlined that, as per clause 3 of the Termination Agreement, three monthly instalments (as defined thereof), can represent in total the amount of EUR 14,500 net. In this regard, the contractual penalty of EUR 30,000 represents almost 207% of three-monthly instalments as defined in the mentioned clause 3 which, for the majority of the Chamber, is abusive.
39. The Chamber further noted that, *in casu*, when the contractual penalty was triggered by the Claimant, the outstanding amount was of EUR 38,000 net, which corresponded to 8 monthly instalments. In this case, the penalty represents 79% of the defaulted amount which, for the majority of the Chamber, is also abusive.
40. On account of the foregoing, the Chamber, by majority, decided to reduce the contractual penalty to EUR 6,368.72 net as per the following calculation:

$$\text{Total defaulted (EUR 38,000) / Overall amount (EUR 179,000) x EUR 30,000}$$

41. Consequently, the Chamber, by majority, concluded that the Respondent must be ordered to pay to the Claimant EUR 6,368.72 net as contractual penalty.
42. From the sake of completeness, the Chamber, by majority, wished to emphasise that from the above calculation it follows that the reduced penalty clause represents 16,76% of the defaulted amount, which is in line with the long-standing jurisprudence of the Chamber.
43. Additionally, from the above calculation it also follows that, in the hypothetical case that the Respondent had not paid any amounts and failed to pay all the remaining instalments (i.e., EUR 141,000), the amount to be paid as penalty (provided that the Claimant indeed triggered the penalty clause), would be of EUR 23,631.28 which, if added to the granted penalty clause of EUR 6,368.72, would result in the total amount of EUR 30,000, i.e., the contractual penalty agreed in the Termination Agreement.
44. In this scenario, a penalty of EUR 30,000 in comparison with the overall amount of EUR 179,000 also represents 16,76% which, again, is in line with the jurisprudence of the Chamber.
45. The Chamber, by recalling the legal principle *non bis in idem*, further established that no interest should be applicable over the penalty.
46. Lastly, the Chamber decided to reject the Claimant's allegations regarding the issuance of the corresponding tax certificates by the Respondent, given that there is no provision in the Termination Agreement by which the latter undertook the obligation thereof.

ii. Compliance with monetary decisions

47. 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.
48. In this regard, the Chamber highlighted that, against clubs, the consequences 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.
49. Therefore, and bearing in mind the above, the Chamber 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 creditor, 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.
50. 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.
51. The Chamber 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

52. 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.
53. Furthermore, 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.
54. Lastly, the Chamber concluded its deliberations by rejecting any other requests for relief may by any of the Parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Bojan Saranov, is partially accepted.
2. The Respondent, PAS Lamia 1964 FC, must pay to the Claimant the following amount(s):

EUR 25,000 net as outstanding amount plus interest *p.a.* as follows:

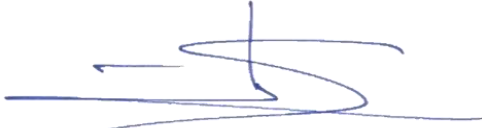
- 5% interest *p.a.* over the amount EUR 6,000 of as from 1 December 2023 until the date of effective payment;
- 5% interest *p.a.* over the amount EUR 5,000 of as from 31 December 2023 until the date of effective payment;
- 5% interest *p.a.* over the amount EUR 4,500 of as from 1 January 2024 until the date of effective payment;
- 5% interest *p.a.* over the amount EUR 5,000 of as from 31 January 2024 until the date of effective payment; and
- 5% interest *p.a.* over the amount EUR 4,500 of as from 1 February 2024 until the date of effective payment;

EUR 6,368.72 net as contractual penalty.

3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
 2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.

7. This decision is rendered without costs.

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules).

CONTACT INFORMATION

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777