

# Decision of the Dispute Resolution Chamber

passed on 4 April 2024

regarding an employment-related dispute concerning  
the player Fabio Borini

**BY:**

**Frans DE WEGER (The Netherlands)**, Chairperson

**Peter LUKASEK (Slovakia)**, member

**Dana MOHAMED AL-NOAIMI (Qatar)**, member

**CLAIMANT:**

**Fabio Borini, Italy**

Represented by Stefano La Porta

**RESPONDENT:**

**Vavacars Fatih Karagumruk, Türkiye**

Represented by Sami Dinç

## I. Facts of the case

1. On 18 August 2021, the Italian player Fabio Borini (hereinafter the *Claimant*) and the Turkish club Vavacars Fatih Karagumruk (hereinafter the *Respondent*) concluded an employment (hereinafter the *Employment Agreement*), valid as from 21 June 2022 until 31 May 2023.
2. In accordance with Clause 7.1 and 7.2 of the Employment Agreement, the Claimant and the Respondent (jointly referred to as the *parties*) mutually agreed upon the following financial remuneration:

*“A net total of 700.000,00-Euro (Seven Thousand Euro) is to be paid to the Player by the Club as the monthly salary in 12 (twelve) equal installments (12 x 58.333,33-Euro) between the period July 2022 - June 2023. The monthly salaries are to be paid the last day of the relevant months.*

*- 200.000,00-Euro (Two Hundred Thousand Euro) shall be paid to the Player on 30.06.2023 as guarantee payment.*

*(...)*

*The Club shall pay to the Player in the amount of 12.000,00-Euro (Twelve Thousand Euros) in total as living cost in 12 (twelve) equal installments (12 x 1.000,00-Euro) between the period September 2022 -August 2023. The living cost installments are to be paid the last day of the relevant months.”*

3. In accordance with Clause 7 of the Employment Agreement, the parties stipulated the following:

*“(...) all payments indicated in this present contract are agreed that are "net" payments. For the avoidance of the doubt, the Club shall be responsible of the taxes and deductions in accordance with the Turkish Tax legislation and the Club shall not be responsible for any other obligations due to the - including but not limited - additional tax duties, social contributions and/or levies related to the other countries' legislations.”*

## II. Proceedings before FIFA

4. On 4 December 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

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

*“The Claimant respectfully requests the DRC to accept this statement of claim and order the Respondent to pay the Claimant the sum of € 829,125.34, plus 5% interest per annum starting from the due dates of each instalment unpaid until the date of payment.”*

6. The Claimant based its claim on the legal principle *pacta sunt servanda* and argued that *“had the Respondent duly paid the salary due to the Player (and the related taxes), the Player would have received the net amounts provided under the Contract without any further liability towards tax authorities. On the contrary, following the end of his contract with the Respondent, the Player moved to Italy, where he domestically in relation to any income that he will be receiving (including the Outstanding Amount, earned while he was living in Italy).”*
7. In this regard, the Claimant provided an expert report *“to determine where and when he bears the obligation to pay taxes related to the collection of the Outstanding Amount and, consequently, to quantify the exact gross amount to be claimed before FIFA in order to benefit from the very same net salary that was agreed with the Respondent under the Contract.”*
8. Within the tax report, the Claimant allegedly provided an accurate calculation of the gross amount corresponding to the outstanding amount in accordance with Italian legislation.
9. Based on the above, the Claimant requested a total amount of EUR 829,125.34:

Description	EUR	Tax Rate
<b>Gross amount</b>	<b>829.125,34</b>	
IRPEF	(356.523,90)	43,00%
Regional surcharge	(19.318,62)	2,33%
Municipal surcharges	(9.949,50)	1,20%
<b>Net Outstanding Income</b>	<b>443.333,32</b>	

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

10. The Respondent rejected the Claim, arguing that it paid the Claimant *“1.719.999,88-Euro with regards to employment contract. In this context, taking into consideration of the annexed payment receipts, the allegations of the Claimant do not reflect the truth.”*
11. Regarding the taxes in Italy, the Respondent argued that it *“is responsible to pay to the Player only the net amounts stipulated in the Contract. As your honorable Chamber is clearly aware that the payment obligation of the Respondent in regards to the taxes is towards the Turkish tax authorities, not to the Player.”*
12. Pointing to Clause 7 of the Employment Agreement, the Respondent highlighted that *“the Club shall not be responsible for any other obligations due to the -including but not limited - additional tax duties, social contributions and/or levies related to the other countries' legislations.”*
13. The Respondent argued that *“the relevant stoppage tax in relation with the net amounts has to be paid by the Club to the Turkish Tax Authorities in accordance with the Turkish Tax*

*Legislation. But, naturally, if the Claimant declares his income tax to the Turkish Tax Authorities, the obligation of the income tax payment belongs to the Claimant in accordance with the principle of individual tax responsibility and also in accordance with the Turkish Tax Legislation. In any case, the Respondent shall not be liable from the tax obligation of the Claimant which may be occurred outside of Türkiye in any way."*

14. In this respect, the Respondent adduced that the "Tax Opinion" which was submitted by the Claimant with its statement of claim are extremely wrong and inapplicable to this dispute. Because, in the relevant document, the gross amount has been calculated pursuant to the Italian Tax Code."

### **c. Replica**

15. The Claimant firstly referred to the proofs of payment provided by the Respondent and argued that the latter "did not provide any clarification as to what debts such payments were intended to settle, nor what, in the Respondent's opinion, would be now the amount due to the Claimant."

16. In particular, the Claimant purported that:

*"most of the payments referred to by the Respondent (notably, all those payment receipts from 5 February 2021 to 29 April 2022, see pages 19-44 of the Respondent's annex I) do not refer to the current contentious matter. In fact, they do not pertain to the Contract, which was valid for the sporting season 2022/2023, but rather to the (different) contract between the parties valid for the season 2021/2022;*

*all others (i.e. the receipts actually related to the Contract, notably, all those issued from July 2022 onwards, see pages 1-18 of the Respondent's annex 1), refer to payments that are not the subject-matter of this claim, as the Player admits having received them."*

17. In this regard, the Claimant clarified that he requests the following payments:

*"four monthly salaries from March to June 2023 (i.e. net € 58,333.33 x 4 = € 233,333.32);  
the lump-sum of € 200,000 net, which fell due on 30 June 2023;*

*the monthly instalments related to the "living costs" from November 2022 to August 2023 (i.e. net € 1,000 x 10 = € 10,000).*

18. The Claimant further provided for the following break-down of his claim:

- a. *"the payment receipt of € 346,909.08 dated 6 July 2022 (pages 1-2 of the Respondent's annex I) pertains to the balance of the outstanding amounts owed to the Player by the Club for the sporting season 2021/2022. Therefore, it has nothing to do with these proceedings;*
- b. *the overall amount due to the Player under the Contract was € 912,000 net, as correctly acknowledged by the Respondent (see paragraph 2 of its reply brief);*

- c. *the payment receipts in pages 3-18 of the Respondent's annex 1 reveal that the Club paid the Player only € 468,666.64 under the Contract, which is the sum of the following eight monthly salaries:*
- € 58,333.33 paid on 31.08.2022 (pages 3-4 of the Respondent's annex 1);
  - € 59,333.33 paid on 29.09.2022 (pages 5-6 of the Respondent's annex 1);
  - € 59,333.33 paid on 31.10.2022 (pages 7-8 of the Respondent's annex 1);
  - € 58,333.33 paid on 1.12.2022 (pages 9-10 of the Respondent's annex 1);
  - € 58,333.33 paid on 5.01.2023 (pages 11-12 of the Respondent's annex 1);
  - € 58,333.33 paid on 28.02.2023 (pages 13-14 of the Respondent's annex 1);
  - € 58,333.33 paid on 5.04.2023 (pages 15-16 of the Respondent's annex 1);
  - € 58,333.33 paid on 11.05.2023 (pages 17-18 of the Respondent's annex 1);
- d. *the Outstanding Amount is the difference between the total amount due under the Contract (i.e. € 912,000) and the sums actually paid by the Club (i.e. € 468,666.64), which is **€ 443,333.322.***"

19. Relating to the outstanding sum of EUR 443,333.32, the Claimant in addition submitted evidence showing that this exact amount has been previously acknowledged by the Respondent as debt.
20. Finally, the Claimant insisted on his previous calculation of taxes, arguing that he *"is entitled to receive fully the Outstanding Gross Amount, instead of the corresponding net, because extra-tax liabilities have arisen as a direct consequence of the Respondent's breach of the payment terms under the Contract."*

#### **d. Duplica**

21. The Respondent recognized its debt of EUR 443,333.32, alleging to begin a settlement negotiation regarding this sum.
22. Reiterating its previous argumentation linked to Clause 7 of the Employment Agreement, arguing that *"the payment obligation of the Respondent in regards to the taxes is towards the Turkish tax authorities, not to the Player."*

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

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

23. 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 4 December 2023 and submitted for decision on 4 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.

24. 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 February 2024 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 an Italian player and a Turkish club.
25. 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 4 December 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**

26. 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**

27. 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**

28. 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 overdue payables as per the Employment Agreement amounting to EUR 443,333.32 net, as well as an additional amount of EUR 385,792.02 corresponding to alleged taxes over said outstanding amount.

29. In this context, the Chamber acknowledged that its task was to determine, based on the evidence presented by the parties, whether the claimed amounts had in fact remained *unpaid* by the Respondent and, if so, whether the latter had a valid justification for not having complied with its financial obligations.
30. The Chamber first noted that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties.
31. In this respect, the Chamber recalled that the Respondent acknowledged the debt of the overdue payables as per the Employment Agreement amounting to EUR 443,333.32 net.
32. Turning its attention to the Claimant's additional request concerning the alleged taxes over the above-mentioned amounts, the Chamber remarked that since the respective overdue payables of EUR 443,333.32 were not yet paid by the Respondent, any ruling on alleged taxes is premature at this point, given that no tax liabilities have been incurred by the Claimant.
33. Without entering into the merits concerning taxes, the DRC added that the Claimant needs to incur the cost and suffer the harm before it can effectively seek relief before FIFA. Consequently, the Chamber concluded that the request for taxes is premature.
34. In view of the foregoing and bearing in mind the basic legal principle of *pact sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the contract concluded between the parties, namely EUR 443,333.32 net.
35. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from 4 December 2023 until the date of effective payment.

## ii. Compliance with monetary decisions

36. 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.
37. 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.

38. 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.
39. 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.
40. 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**


41. 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.
42. 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.
43. 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 Football Tribunal has jurisdiction to hear the claim of the Claimant, Fabio Borini.
2. The claim of the Claimant is partially accepted.
3. The Respondent, Vavacars Fatih Karagumruk, must pay to the Claimant the following amount(s):
  - **EUR 443,333.32 net as outstanding amount** plus 5% interest *p.a.* as from 4 December 2023 until the date of effective payment.
4. The claim of the Claimant regarding taxes is premature.
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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