

Decision of the Players' Status Chamber

passed on 4 April 2024

regarding an employment-related dispute concerning the coach Patrick
Stephen Kluivert

BY:

Natalia Chiriac, Moldova

CLAIMANT:

Patrick Stephen Kluivert, Netherlands

Represented by Ercan Sevdimbaş

RESPONDENT:

Yukatel Adana Demirspor A.S., Türkiye

Represented by Umur Varat

I. Facts of the case

1. On 11 July 2023, the Dutch coach Patrick Stephen Kluivert (hereinafter: **the Coach** or **the Claimant**) and the Turkish club Yukatel Adana Demirspor A.S. (hereinafter: **the Club** or **the Respondent**) entered into an employment contract valid as from the date of signature until 30 June 2025 (hereinafter: **the Employment Contract**).
2. On 4 December 2023, the Coach and the Club signed a *Mutual Termination Agreement* by means of which they (i) terminated the Employment Contract; and (ii) established the financial consequences in connection thereto (hereinafter: **the Termination Agreement**).
3. Pursuant to the Termination Agreement, the Club undertook to pay to the Coach:
 - EUR 142,666 as outstanding remuneration by 8 December 2023;
 - EUR 150,000 as compensation, payable as follows:
 - EUR 65,000 on 30 January 2024; and
 - EUR 65,000 on 28 February 2024.
4. On 23 January 2024, the Coach lodged a first claim before FIFA for outstanding remuneration amounting to EUR 142,666 (due by 8 December 2023), which was filed under ref. no. FPSD-13433.
5. On 1 February 2024, the Coach lodged a second claim before FIFA for outstanding remuneration amounting to EUR 65,000 (due by 30 January 2024), which was filed under ref. no. FPSD-13571.
6. On 28 February 2024, the Coach lodged the claim at hand before FIFA for outstanding remuneration. Accordingly, the Coach requested to be awarded EUR 65,000 under the Termination Agreement plus 5% interest *p.a.* as from 28 February 2023 until the date of effective payment.
7. On 26 March 2024, the Club submitted its reply to the claim. In doing so, the Club acknowledged its default towards the Coach, however argued that it was prevented from making the payment due to financial impact of the earthquake in Türkiye and especially the city of Adana.
8. The Club pointed out to the fact that a state of emergency was declared on 8 February 2023, as well as the national currency had depreciated by more than 50%. Likewise, it recalled its good reputation when it comes to financial obligations but stated that it did not

have the means to comply with the order. Consequently, the Club requested that the claim be rejected.

II. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

9. First of all, the Single Judge of the Players' Status Chamber (hereinafter: **the Single Judge**) analysed whether she was competent to deal with the case at hand. In this respect, she took note that the present matter was presented to FIFA on 28 February 2024 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.
10. Furthermore, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. c) of the Regulations on the Status and Transfer of Players (February 2024 edition), the Players' Status Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Dutch coach and a Turkish club.
11. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, she confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (February 2024 edition) and considering that the present claim was lodged on 28 February 2024, the cited edition of said regulations (hereinafter: **the Regulations**) is applicable to the matter at hand as to the substance.

b. Burden of proof

12. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which she may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (**TMS**).

c. Merits of the dispute

13. The competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the

documentation on file. However, the Single Judge emphasised that in the following considerations she will refer only to the facts, arguments and documentary evidence, which she considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

14. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact it pertains to a claim for outstanding remuneration only, based on the Termination Agreement.
15. In particular, the Single Judge acknowledged that the sum now claimed by the Coach (*i.e.*, EUR 65,000) is contractually based and the debt was acknowledged by the Club, who nonetheless referred to the earthquake in Türkiye and its economic impacts to justify its default.
16. While considering the above and despite being mindful of the argumentation of Club, the Single Judge found it decisive that the earthquake took place in February 2023, whereas the parties concluded the Employment Contract in July 2023 and the Termination Agreement in December 2023. It followed, in the Single Judge's view, that at the time the Club hired the services of the Coach, it was (or at least should have been) fully aware of its financial capabilities. As such, she deemed that the Club could not now benefit from its own tort by referring to an unforeseen event – which in fact had long happened and cannot be deemed as an extraordinary element unbeknown to the parties.
17. By the same token, the Single Judge observed that the Club failed to provide any documentary evidence supporting the alleged impossibility to perform the payments under the Termination Agreement and/or any attempt to avoid litigation by reaching an amicably solution with the Coach. Conversely, the Single Judge acknowledged that the Club has been recently involved in multiple transactions in TMS, therefore pursuing its footballing activities with seemingly normality.
18. By way of conclusion, the Single Judge decided that the reasons invoked by the Club could not succeed, hence the Coach should be entitled to the outstanding remuneration sought in line with the general legal principle of *pacta sunt servanda*. The Single Judge felt furthermore comforted with this conclusion by considering that the Club has systematically failed to comply with its obligations, as established in the previous claims of the Coach involving the same Termination Agreement (*i.e.*, case ref. no. FPSD-13433 and FPSD-13571).
19. In addition, taking into consideration the Coach's request as well as the constant practice of the Football Tribunal in this regard, the Single Judge decided to award the Coach interest at the rate of 5% *p.a.* on the outstanding amounts as from its due date (*i.e.*, 1 March 2024) until the date of effective payment.

ii. Compliance with monetary decisions

20. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 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.
21. 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.
22. Therefore, bearing in mind the above, the Single Judge decided that the Club must pay the full amount due (including all applicable interest) to the Coach within 45 days of notification of the decision, failing which, at the request of the Coach, 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. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
23. The Club shall make full payment (including all applicable interest) to the bank account provided by the Coach in the Bank Account Registration Form, which is attached to the present decision.
24. The Single Judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations.

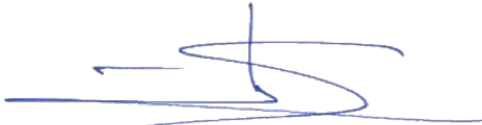
d. Costs

25. 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.
26. 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.

III. Decision of the Players' Status Chamber

1. The claim of the Claimant, Patrick Stephen Kluivert, is accepted.
2. The Respondent, Yukatel Adana Demirspor A.S., must pay to the Claimant the following amount(s):
 - **EUR 65,000 as outstanding remuneration** plus 5% interest *p.a.* as from 1 March 2024 until the date of effective payment.
3. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
4. Pursuant to art. 8 of Annexe 2 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. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.
6. 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

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