

# Decision of the Dispute Resolution Chamber

passed on 4 April 2024

regarding an employment-related dispute concerning  
the player Olivier Michel Kemen

## COMPOSITION:

**Livia Silva Kägi (Brazil/Switzerland)**, Deputy Chairwoman  
**Stella Maris Juncos (Argentina)**, member  
**Jorge Gutierrez (Costa Rica)**, member

## CLAIMANT:

**Olivier Michel Kemen, France & Cameroon**  
Represented by Varet Près Killy (SELARL)

## RESPONDENT:

**Mondihome Kayserispor, Türkiye**

## I. Facts of the case

1. On 5 August 2021, the Cameroonian and French player, Olivier Michel Kemen (hereinafter: *the Claimant* or *the player*) and the Turkish club, Mondihome Kayserispor (hereinafter: *the Respondent* or *the club*) concluded an employment contract valid as from the date of signature until 31 May 2024 (hereinafter: *the contract*).
2. The player was born on 20 July 1996.
3. In accordance with clause 6 of the contract, the player is entitled to the following amounts:
  - Season 2021/2022: EUR 425,000: EUR 75,000 as an advance payment payable at the date of signature and 10 monthly instalments of EUR 35,000 payable as follows:
    - EUR 35,000 on 30 August 2021.
    - EUR 35,000 on 30 September 2021.
    - EUR 35,000 on 30 October 2021.
    - EUR 35,000 on 30 November 2021.
    - EUR 35,000 on 30 December 2021.
    - EUR 35,000 on 30 January 2022.
    - EUR 35,000 on 28 February 2022.
    - EUR 35,000 on 30 March 2022.
    - EUR 35,000 on 30 April 2022.
    - EUR 35,000 on 30 May 2022.
  - Season 2022/2023: EUR 425,000: EUR 75,000 as an advance payment payable on 15 August 2022 and 10 monthly instalments of EUR 35,000 payable as follows:
    - EUR 35,000 on 30 August 2022.
    - EUR 35,000 on 30 September 2022.
    - EUR 35,000 on 30 October 2022.
    - EUR 35,000 on 30 November 2022.
    - EUR 35,000 on 30 December 2022.
    - EUR 35,000 on 30 January 2023.
    - EUR 35,000 on 28 February 2023.
    - EUR 35,000 on 30 March 2023.
    - EUR 35,000 on 30 April 2023.
    - EUR 35,000 on 30 May 2023.
  - Season 2023/2024: EUR 425,000: EUR 75,000 as an advance payment payable on 15 August 2023 and 10 monthly instalments of EUR 35,000 payable as follows:
    - EUR 35,000 on 30 August 2023.
    - EUR 35,000 on 30 September 2023.
    - EUR 35,000 on 30 October 2023.

- EUR 35,000 on 30 November 2023.
  - EUR 35,000 on 30 December 2023.
  - EUR 35,000 on 30 January 2024.
  - EUR 35,000 on 28 February 2024.
  - EUR 35,000 on 30 March 2024.
  - EUR 35,000 on 30 April 2024.
  - EUR 35,000 on 30 May 2024.
4. Moreover, the player would be entitled to an allowance in the amount of EUR 10,000 net for accommodation and transportation per season which was due on the 30th of August of the relevant years.
5. Clause 6.7 of the contract reads as follows:
- “In case the Club fails to make any salary or bonus payment to the Player on its due date and is in default for more than 60 days, the Player shall notify the Club in writing and provide fifteen (15) days to the Club for payment. If the Club fails to pay any such outstanding remuneration within the notified 15-day period, the Player shall have the option to terminate the Contract unilaterally with just cause, bring proceedings before FIFA in accordance with Article 8 A) below, and claim compensation and damages against the Club (including payment of all salaries due by the Club until the end of the term of the Contract).”*
6. In accordance with the Transfer Matching System (TMS), on 3 October 2023, the club changed its name from Kayserispor Kulübü Derneği/Kayserispor Kulubu to Mondihome Kayserispor.
7. On 18 October 2023, the Claimant put the Respondent in default and requested payment of EUR 155,000 corresponding to the payments due on 15 August 2023, 30 August 2023, and 30 September 2023 salaries as well as the allowance for accommodation and transportation, setting a deadline of 15 days in order for the Respondent to remedy its default.
8. On 3 November 2023, the Claimant put again the Respondent in default and requested payment of EUR 190,000 corresponding to the payments of 15 August 2023, 30 August 2023, 30 September 2023, and 30 October 2023 salaries as well as the allowance for accommodation and transportation, setting a deadline of 15 days in order for the Respondent to remedy its default.
9. On 10 November 2023, the club paid EUR 35,000 to the player.
10. On 17 November 2023, the club paid EUR 45,000 to the player.

11. On 23 December 2023, the Claimant sent a termination notice to the club on the grounds of overdue payables.
12. On 30 January 2024, the player signed an employment contract (hereinafter: *the new contract*) with the Turkish club, İstanbul Başakşehir Futbol Kulübü Anonim Şirketi (hereinafter: *IBFK*), valid as from the date of signature until 30 June 2027.
13. In accordance with clause 6.1 of the new contract, for the season 2023/2024 the player was entitled to:

*“350.000,00-Euro (Three Hundred Fifty Thousand Euros) of the above-mentioned total amount is to be paid to the Player by the Club as a monthly salary in 5 (five) equal installments (5 x 70.000,00 Euro) between the period February 2024 – June 2024. The monthly salaries are to be paid the last day of the relevant months.*

*50.000,00-Euro (Fifty Thousand Euros) of the aforementioned amount is determined as the total minimum guarantee bonuses in favor of the Player and is to be paid during the relevant football season. All the bonus payments under any name whatsoever, which are made to the Player during the football season, shall be calculated and in case these bonus payments are less than net 50.000,00-Euro, the outstanding part up to the aforementioned amount shall be paid by the Club to the Player until 30.06.2024. The Parties determine this amount to guarantee the bonus payments to be paid to the Player during the football season. All the team bonuses and/or success bonuses to be paid to the Player under any name whatsoever are included in this total guarantee bonus payment and shall be deducted from this amount during the relevant football season. Match and team bonuses shall be fixed and paid in Turkish Lira pursuant to the effective buying rate of Central Bank of the Republic of Turkey on the date of 01.02.2024 and these will be deducted from the aforementioned guarantee bonus payment amount.”*

14. In accordance with clause 6.4 of the new contract:

*“- [IBFK] shall cover the monthly house rent of the Player’s domicile up to 2.000,00-Euro (Two Thousand Euros). In case of existence, the exceeding amount shall be covered by the Player himself. The expenditures of the house (including but not limited to electricity, water, heating) shall be covered by the Player himself.*

*- [IBFK] shall provide the Player 10 (ten) round-trip total business class flight tickets to his country, İstanbul – France for the use of the Player, his wife and his kids per season. Exceptionally, only 5 (five) round-trip total business class flight tickets shall be provided by the Club for the remaining part of 2023/2024.*

*- [IBFK] shall provide an appropriate car (the discretion of choosing the car is belong to [IBFK]) for the use of the Player during the continuation of this Contract provided that the Player has a driving license which is valid in Turkey. The Player will be*

*responsible for all the costs of the car other than rent/leasing fee, insurance premiums, tax and maintenance. The Player mainly has to cover fuel, tolls, fines etc."*

## II. Proceedings before FIFA

15. On 24 January 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

16. In his claim, the player indicated that the club failed to pay his outstanding remuneration since August 2023. In particular and following the second default notice in the amount of EUR 190,000, the club only paid EUR 80,000 (EUR 35,000 on 10 November 2023 and 45,000 on 17 November 2023) and did not pay the salary due in November 2023.

17. In view of the foregoing, the player stated that the club failed to fulfil its contractual obligations, and therefore, he had just cause to terminate the contract. As a result, the player claimed he is entitled to outstanding remuneration and compensation for breach of contract.

18. The Claimant requested the following relief:

- EUR 145,000 as outstanding remuneration:

EUR 75,000 corresponding to the payment on 15 August 2023

EUR 35,000 corresponding to the payment on 30 October 2023

EUR 35,000 corresponding to the payment on 30 November 2023

- EUR 245,000 as compensation: (EUR 35,000 \*6).

### b. Position of the Respondent

19. In its reply, the Respondent challenged the unilateral termination of the contract considering that:

- The player was aware of the club's financial situation and the sporadic payments, and was equally aware that the Respondent would "eventually" meet its financial obligations. The Claimant did not contest this behaviour and it should be considered that he tacitly accepted the terms of employment.
- The Respondent argued that the termination was "orchestrated by the Claimant" as the media suggested a transfer to the player's new club shortly after the termination

(less than 24 hours). The player's move cannot be seen as a coincidence as the club's former coach also unilaterally terminated his contract and joined the new club.

- The Respondent requested FIFA to request the new contract of the player from the Türkiye Football Federation, as it considered that the player *"may present a fabricated contract with the purpose of unjust enrichment"*.
- *"The Respondent also would like to underline that The Claimant is not entitled for full salary corresponding to December 2023. This amount should be reduced pro rata"*.
- Finally, the Respondent indicated the following *"The Claimant's request for compensation is also very excessive. The Claimant has only 5 months remaining on his employment contract and the compensation requested corresponds more than the total value of the remaining contract. This is unjust and has no legal ground. While The Claimant mentions that compensation corresponding to 6 monthly cost of a player is awarded in extreme cases where a club is in constant and severe breach, the case in hand does not involve such conditions. The Respondent considers this as an attempt for gaining unjust enrichment."*

### III. Considerations of the Dispute Resolution Chamber

#### a. Competence and applicable legal framework

20. 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 24 January 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.
21. 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 par. 1 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 a French/Cameroonian player and a Turkish club.
22. 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 24 January 2024, 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**

23. 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 TMS.

### **c. Merits of the dispute**

24. 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**

25. 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 for breach of contract.
26. According to the player, he terminated the contract with just cause due to outstanding remuneration. In the other hand, the Respondent indicated that the player was aware of the late payments of the club and that he accepted this situation, moreover, it indicated that the player “orchestrated” this termination in order to sign a contract with his new club.
27. Considering said constellation, the DRC noted that the player claims not having received his remuneration corresponding EUR 145,000. The DRC also noted that the Claimant has provided written evidence of having put the Respondent in default two times, on 18 October 2023 and 3 November 2023, i.e., at least 15 days before unilaterally terminating the contract on 23 December 2023.
28. Moreover, the Chamber noted that in the two default notices the Claimant requested the payment of his outstanding remuneration corresponding to EUR 155,000 (i.e., more than 4 salaries) in the first default and EUR 190,000 (i.e., more than 5 salaries) in the second default. The Chamber also noted that the club only paid EUR 80,000 after being served with

the second default notice. Therefore, as it did not fully pay the amount requested the club was not able to cure its default.

29. Furthermore, the Chamber noted that at the moment of termination, the November 2023 salary felt due and was not paid along with the rest of the amounts due.
30. As to the argumentation of the club that the player was aware of this situation and accepted to be paid late, the Chamber stressed that this argumentation cannot be followed, since it was evident that by sending two default notices to the club reclaiming his outstanding remuneration, he was not in agreement to it.
31. For sake of clarity, the Chamber acknowledged that clause 6.7 of the contract provided a definition for termination with just cause and payment of compensation in case this clause was triggered:

*"In case the Club fails to make any salary or bonus payment to the Player on its due date and is in default for more than 60 days, the Player shall notify the Club in writing and provide fifteen (15) days to the Club for payment. If the Club fails to pay any such outstanding remuneration within the notified 15-day period, the Player shall have the option to terminate the Contract unilaterally with just cause, bring proceedings before FIFA in accordance with Article 8 A) below, and claim compensation and damages against the Club (including payment of all salaries due by the Club until the end of the term of the Contract)."* (Emphasis added)

32. However, the Chamber highlighted that the above clause grants a grace period of 60 days plus 15 days, which is contrary to art. 18 par. 6 of the Regulations. Moreover, the Chamber considered that such clause lacks clarity. Consequently, the DRC concluded that said clause cannot be applicable to the present case.
33. Finally, and in view of all the above, the DRC concluded that the player had a just cause to unilaterally terminate the contract based on art. 14bis of the Regulations.

## ii. Consequences

34. 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.
35. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, amounted to EUR 180,000: EUR 75,000 corresponding to the payment due on 15 August 2023, EUR 35,000 corresponding to the payment due on 30 October 2023, EUR 35,000 corresponding to the payment due on



30 November 2023 and EUR 35,000 corresponding to the payment due on 30 December 2023.

36. 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., EUR 180,000.
37. 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.
38. 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.
39. 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.
40. 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 EUR 175,000 serves as the basis for the determination of the amount of compensation for breach of contract.
41. 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.

42. Indeed, the player found employment with IBFK. In accordance with the pertinent employment contract, the Chamber concluded that the player mitigated his damages in the total amount of EUR 240,000.
43. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason i.e., overdue payables by the club, and therefore decided that the player shall receive additional compensation.
44. In this respect, the DRC decided to award the amount of additional compensation of USD EUR 106,250 (EUR 425,000/12\*3), i.e., three times the monthly remuneration of the player.
45. 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 EUR 106,250 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

### iii. Sporting Sanctions

46. In continuation, the Chamber recalled that under art. 17 par. 4 of the Regulations, in addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period.
47. As to the protected period, this is defined in the Regulations as *"a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional"*.
48. In the present case, the player was 25 years old when he signed the contract, which took place on 5 August 2021. As such, the Chamber confirmed that since the termination of the contract occurred on 24 December 2023, it took place within the protected period. At the same time, the DRC recalled that the player terminated the contract with just cause.
49. Furthermore, the Chamber wished to recall the Commentary on the RSTP (2023 edition):

*"[...] the DRC has established jurisprudence according to which sporting sanctions are regularly applied against clubs found, at least four times in the two years preceding*

*the DRC decision, to have terminated a contract without just cause or to have seriously breached contractual obligations such that a player has just cause to terminate their contract. It must be noted, however, that while the DRC applies this approach with relative consistency, there were cases in which the circumstances merited sanctions to be imposed on clubs right away even if the threshold of four repeated offences was not met.*

*In other words, should the circumstances of a case justify it, nothing prevents the DRC from immediately imposing sporting sanctions, even in a first case of breach of contract of a club. Likewise, it is clear that the Regulations allow the DRC to impose sporting sanctions without any “mathematical” threshold, again depending on the circumstances of each case. [...]” (pp. 211 and 212).*

50. In view of the foregoing, the Chamber noted that as per the specific circumstances of the case, the club has been constantly breaching the contract by not paying a rather significant portion of the player’s salary on time. This alone, in the Chamber’s view, would have been sufficient to justify imposing sporting sanctions on the club. In addition to the above, the Chamber noted that the club had also on many occasions in the recent past been held liable by the Football Tribunal for the early termination of employment contracts without just cause. In fact, the DRC noted that the Club had already been imposed a registration ban due to repetitive breaches of contract in May 2022 (*cf.* FPSD-5441), however, even after having served such ban entirely, persisted with the unlawful behaviour.
51. What is more, the Chamber highlighted that during 2022 and 2023, the Club was again held liable for breaches of contracts in at least four opportunities, namely in the cases detailed in continuation, which was deemed to be against the spirit of the Regulations and especially the principle of contractual stability.
  - FPSD-6413, Decision of 14 September 2022.
  - FPSD-6634, Decision of 14 September 2022.
  - FPSD-8186, Decision of 23 February 2023.
  - FPSD-7015, Decision of 26 May 2023.
52. Based on the foregoing, the Chamber decided that, by virtue of art. 17 par. 4 of the Regulations, the Club shall be sanctioned with a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.
53. For the sake of completeness, the Chamber recalled that in accordance with article 24 par. 3 lit. a) of the Regulations, the consequences for failure to pay relevant amounts in due time may be excluded where the Football Tribunal has imposed a sporting sanction based on article 17 in the same case. Consequently, the Chamber confirmed that the consequences for failure to pay relevant amounts in due time envisaged by art. 24 of the Regulations were excluded in the present matter, and that should the Respondent fail to

timely comply with this decision, it would be for the FIFA Disciplinary Committee to adopt the necessary measures in accordance with the FIFA Disciplinary Code.

**d. Costs**

54. 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.
55. 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.
56. 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, Olivier Michel Kemen, is partially accepted.
2. The Respondent, Mondihome Kayserispor, must pay to the Claimant the following amount(s):
  - **EUR 180,000 as outstanding remuneration.**
  - **EUR 106,250 as compensation for breach of contract without just cause.**
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. The Respondent shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.
6. If full payment is not made within **30 days** of notification of this decision, the present matter shall be submitted, upon request of the Claimant, to the FIFA Disciplinary Committee.
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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