Dispute Resolution Chamber

Date: 31 March 2021

Sent to:

Claimant: XXXXXXXXXXXXXXXXX
c/o Federico Venturi Ferriolo
Federico.venturiferriolo@lcalex.it

Respondent: XXXXXXXXXXXXXXXXX
c/o George T. Christofides
gio@legalpartners.cy.net

NOTIFICATION OF THE GROUNDS OF THE DECISION
EMPLOYMENT-RELATED DISPUTE CONCERNING THE PLAYER XXXXXXXXXX

Ref. Nr. 20-01136

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned matter.

We kindly invite you to take note of this decision.

We remain at your disposal.

Yours faithfully,

FIFA

Erika Montemor Ferreira
Head of Players' Status

Copy for information:
HFF
UEFA

Decision of the Dispute Resolution Chamber

passed on 20 January 2021

regarding an employment-related dispute concerning the player XXXXXXXXXX

COMPOSITION:

Omar Ongaro (Italy), Deputy Chairman
Tomislav Kasalo (Croatia), member
José Luis Andrade (Portugal), member

CLAIMANT:

XXXXXXXXXXXXXXX
Represented by Federico Venturi Ferriolo

RESPONDENT:

XXXXXXXXXXXXXXX
Represented by George T. Christofides

I. Facts of the case

1. On 31 January 2020, the Chilean player XXXXXXXX (hereinafter "the Player") and the club XXX (hereinafter "the Club") (jointly referred to as "the parties") signed an employment contract (hereinafter: "the contract") valid as from 1 February 2020 until 31 May 2020.

2. On the same day, a representative of the club wrote an email to the representative of the player, stating that *"Please find attached the employment contracts and image rights contracts for the 3 years"*.

3. According to art. 1.3 of the contract, the club undertook to pay to the player a monthly salary of *EUR X net (EUR X gross)*.

4. According to art. 9.2. of the Contract, the player shall be entitled to terminate the contract if the club:

   - *9.2.1 Shall be guilty of serious or persistent breach of the terms of this Contract,*
   - *9.2.2 Fails to pay any due payables or other benefits, allowances or bonuses due to the Player within 30 days since the date that the Club has been put in default in writing by the Player"*

5. On 1 February 2020, the parties allegedly signed an "*Image Rights Contract*" (hereinafter: the "IR contract"), according to which the club undertook to pay to the player the following:

   - *"From 1 February until 31 May 2020: EUR X net per month;*
   - *Accommodation near the training centre: up to EUR X per month;*
   - *1 air ticket economy class from X to his country for the period 2019-2020;*
   - *Bonus of EUR X for every goal he scores;*
   - *Bonus of EUR X for every assist he gives;*
   - *If the player "competes in half of the remaining games until the end of season 2019-2020": EUR X".*

6. On 1 August 2020, the parties signed a second employment contract (hereinafter "the second contract"), valid as from the date of signature until 31 May 2021.

7. On 2 August 2020, the parties allegedly signed a second "Image Rights Contract" (hereinafter "the second IR contract""), according to which the club undertook to pay to the player the following:

   - *"From 1 August 2020 until 31 May 2021: EUR X net per month;*
   - *Accommodation near the training centre: up to EUR X per month;*
   - *1 air ticket economy class from X to his country for the period 2020-2021;*
   - *Bonus of EUR X for every goal he scores;*
   - *Bonus of EUR X for every assist he gives."*

8. According to art. 1.3 of the second contract, the player was entitled to a monthly salary of "*EUR X net (EUR X gross)*".

9. The player submitted the copy of a third employment contract (hereinafter: "the third contract") *"signed today, 02/08/2021*" valid as from *"01/08/2021 until 31/05/2022"*. According to art. 1.3 of the third contract, the player was allegedly entitled to a monthly salary of EUR X net (EUR X gross).

10. The player also submitted the copy of a third "Image Rights Contract" (hereinafter "the third IR contract"), "*signed today, 03/08/2021"*, according to which the club allegedly undertook to pay to the player the following:

    - *"From 1 August 2021 until 31 May 2022: EUR X net per month;*
    - *Accommodation near the training centre: up to EUR X per month;*
    - *1 air ticket economy class from X to his country for the period 2021-2022;*
    - *Bonus of EUR X for every goal he scores;*
    - *Bonus of EUR X for every assist he gives".*

11. On 30 April 2020, the player put the club in default to pay EUR X within 15 days, corresponding to *"the salaries and remunerations"* of February, March and April 2020.

12. On 30 May 2020, the player terminated the contract unilaterally and with immediate effect. In his termination notice, the player took note of the absence of reply and payment to his letter dated 30 April 2020.

13. The player also referred to art. 9.2.2 of the Contract and to art. 14bis of the FIFA Regulations on the Status and transfer of Players (RSTP), deeming to have just cause to terminate the contract dated 31 January 2020 *"and any further renewals, extension and/or any other commitment with your club (which validity shall be disputed" as well as the IR contract dated 1 February 2020 "and any further renewals, extension and/or any other commitment with your club (which validity shall be disputed".*

14. On 8 August 2020, the player filed a claim at FIFA against the Respondent.

15. In his claim, the player first held that he signed all of the employment contracts and IR contracts on 31 January 2020, valid up until 31 May 2022.

16. The player claimed that as from the signature of the Contract, the club started not complying with its contractual obligations.

17. As for the Claimant's submissions, given that the club failed to pay 3 monthly salaries despite his default notice, granting 15 days, the player considers to have complied with art. 9.2.2 of the Contract and with art. 14bis of the RSTP.

18. In this respect, the player underlined that at the date of termination, the club owed him "*all salaries since the commencement of the employment relationship*". Therefore, the player considers to have terminated the contract with just cause.

19. The player further argued that the remuneration agreed upon in the IR contracts must be considered as remuneration as "*said agreement contains elements directly linked to the services of the Claimant as a player"*. In this regard, the player referred to DRC and CAS jurisprudence.

20. The player also considered that the benefits such as accommodation and air fare tickets, formed part of his remuneration.

21. In light of the above, the player requested the total amount of EUR X as outstanding remuneration and compensation for breach of contract.

22. Finally, the player also requested that the club bears all costs of the proceedings and pays all of his legal costs.

23. In its reply, the club first stated that it only signed the employment contract on 31 January 2020, valid until 31 May 2020, but that it never signed any other contract.

24. Preliminarily, the club considered that the present matter is a force majeure case and should therefore be decided by the FIFA Council. The club maintained that this is confirmed by FIFA's COVID-19 Guidelines.

25. Moreover, the club argued that the DRC does not have jurisdiction to decide on the image rights contract.

26. As for the Respondent's submissions, on 13 March 2020, the X FA (hereinafter "the CFA") decided, in collaboration with UEFA and the X Government, to suspend all competitions due to COVID-19.

27. On 23 March 2020, the Minister of Health of X declared X's region as an infected local area and prohibited any movement. The decree also prohibited open-air sports' spaces.

28. On 8 April 2020, the Minister of Health of X issued a new decree by which any unnecessary movement was prohibited until 30 April 2020. Physical exercise was prohibited if involving more than 2 persons.

29. On 15 May 2020, the CFA decided to cancel all of its competitions on consultation with the Ministry of Health and medical experts of the government.

30. On 20 May 2020, the Minister of Health of X issued a new decree cancelling the previous ones, but maintaining that "*football matches and other sports competitions are prohibited*".

31. On 5 June 2020, football matches were authorised without any spectators and without the use of dressing rooms.

32. With regard to the player's salaries, the club argued to have deposited the salaries of February and March 2020 with the CFA *"until 15 March 2020"*.

33. The club invoked the doctrine of *force majeure* or frustration to discharge from its contractual obligations for the period from 13 March until 31 May 2020.

34. In this respect, the club argued that COVID-19 constitutes a force majeure situation. The club referred to CAS' definition and interpretation of *force majeure*.

35. Moreover, the club held that the FIFA Council had recognised COVID-19 as a *force majeure* situation.

36. Due to *force majeure*, neither party to the contract was able to perform its obligations, thereby establishing that the change of circumstances and the impossibility to pay salaries were not due to any fault of the parties.

37. Taking into account that the employment relationship ended on 31 May 2020, the club highlighted that CFA's competitions did not resume until after that date.

38. Furthermore, the CFA decided not to pay TV rights to clubs for the period March to May 2020, due to the COVID-19 pandemic.

39. Notwithstanding the fact that the club considers the claim to be inadmissible with regard to the IR contract, the club argued that the doctrine of *force majeure* would apply in the same way to the IR contract.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter "DRC") analysed whether it was competent to deal with the case at hand. In this respect, he took note that the present matter was submitted to FIFA on 8 August 2020 and submitted for decision on 13 January 2021. Taking into account the wording of art. 21 of the January 2021 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

2. Subsequently, DRC referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in conjunction with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition January 2021), it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player and club.

3. Furthermore, the DRC 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 Player (edition January 2021), and considering that the present claim was lodged on 8 August 2020, the August 2020 edition of said regulations (hereinafter: "the Regulations") is applicable to the matter at hand as to the substance.

4. Regarding the argument presented by the Respondent against the competence of the DRC, the DRC noted that in contrary to what is stated by the Respondent, the FIFA Council was the FIFA body entrusted in drafting the Covid-19 Guidelines. However, this does not affect the competence and functions of the DRC in the present proceeding. Therefore, the DRC decided that the claim shall be deemed admissible.

5. The DRC emphasised that the controverted points in this case are:

    a. If the three alleged employment contracts and three image rights contracts constitute part of the employment relationship and in consequence, the DRC is entitled to decide on their basis.
    b. If the Covid-19 pandemic was a force majeure event in the case at hand.
    c. Based on the above, if the Claimant had just cause to terminate the employment relationship.
    d. In the affirmative, which consequences arise against the Respondent based on the specific circumstances of the case.

6. Once the aforementioned had been established, the DRC proceeded to decide on each of the previous points.

7. First, it shall be highlighted that the DRC is only competent to hear "*employment-related disputes*" and not on image rights agreements. However, this might not be the same in the event that separate

agreements are meant to be part of the same employment relationship. In order to assess this, the DRC has been applying certain criteria.

8. According to the well-established DRC jurisprudence, image rights agreements are considered part of the same employment relationship if the agreement contains *inter alia* provisions regarding bonuses directly related to the achievement of sporting objectives, which are typical for employment contracts and not for image rights agreements. Also, the image rights agreement could contain provisions regarding accommodation, flight tickets and the use of a car, which again, are typical for employment contracts.

9. In the matter at hand, the DRC noted that the three employment contracts and the three IR contracts are closely linked. The IR contracts contain employment related features such as accommodation allowance, sporting related bonuses and flight tickets.

10. Additionally, the DRC referred to the email dated 31 January 2020 in which a representative from the Respondent sent an email to the Claimant stating: *"Please find attached the employment contracts and image rights contracts for the 3 years". Therefore,* all six contracts were apparently provided to the Claimant on the same date against what it is stated in the same contracts, which some of them show future dates.

11. In relation to the point that most of the contracts are not signed by the Respondent, the DRC understood that this email shall be considered as valid and binding offer as it included all the *"essentialia negotii"* and if the Respondent uses certain subterfuges in order to take possible advantages, this shall not affect the Claimant and its entitlements. Notwithstanding the above, the Claimant shall be aware of the risks which could entail proceeding with this kind of practice and emphasised that these modus operandi cannot be considered as an acceptable behaviour on either side.

12. Considering the above, the DRC deemed that in this particular case, all six contracts (three employment contracts and three image rights contracts) shall be considered part of the employment relationship

13. The competence of the DRC and the applicable regulations having been established, the DRC entered into the substance of the matter. In this respect, the DRC started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the DRC 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.

14. Having said this, the Chamber proceeded with an analysis of the circumstances surrounding the present matter, the parties' arguments as well the documentation on file, bearing in mind art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.

15. In this respect, the Chamber also recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA's judicial bodies may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in TMS.

16. Once the above had been established, the DRC proceeded to determine if the Claimant had just cause to terminate the employment relationship.

17. In this regard, the DRC noted that it is undisputed that the Respondent had failed to pay the agreed salaries to the Claimant. However, on the one hand the Respondent alleges to had deposited certain part of the salary with the CFA and on the other hand, the Respondent alleges that the Covid-19 pandemic is an event of *force majeure* which as a result releases the Respondent from its contractual obligations.

18. On the first argument, the DRC noted that it cannot agree acquiesce or consider as valid any type of deposit not directly made with the relevant counter-party, unless there is a legal basis, which according to the evidence on file is not the case herein.

19. On the second argument from the Respondent, the DRC highlighted that against the argument from the Respondent, on 6 April 2020, the FIFA Bureau made several decisions regarding regulatory and legal issues as a result of COVID-19. In order to temporarily amend the RSTP, the Bureau relied upon article 27 as its source of power, determining that the COVID-19 outbreak was a matter not provided for and a force majeure situation for FIFA and football generally. However, and against the Respondents assertions, the Bureau did not determine that the COVID-19 outbreak was a force majeure situation in any specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure.

20. Furthermore, it was emphasised that Clubs or employees cannot rely on the Bureau decision to assert a force majeure situation (or its equivalent). Whether or not a force majeure situation (or its equivalent) exists in the country or territory is a matter of law and fact, which must be addressed on a case-by-case basis vis-à-vis the relevant laws that are applicable to any specific employment or transfer agreement.

21. Following this argumentation, the DRC noticed that the Respondent has failed to provide any conclusive evidence as to how the specific event made it impossible to comply with its financial dues towards the Respondent. Additionally, the Respondent has not provided any evidence on engaging in good faith negotiations with the Claimant, or any other employee, for this purposes in order to agree any potential deduction, reduction or postponement of its contractual dues.

22. Therefore, the argument presented by the Respondent of force majeure was dismissed by the DRC.

23. Once the above had been established, the DRC had to rule on the termination the Contract by the Claimant and whether it was made with or without just cause.

24. In this regard, the DRC scrutinized the evidence on file and acknowledge that on 30 April 2020, the Claimant put the Respondent in default for the amount of EUR X and gave the Respondent 15 days to remedy the default.

25. Consequently, the DRC decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent was liable to pay to the Claimant outstanding remuneration in the total amount of EUR X.

26. Based on the previous considerations of the DRC, it is clear that this amount corresponds to 3 monthly salaries and therefore, in line with art. 14bis of the Regulations, the DRC decided that Claimant had just cause to terminate the contract on 30 May 2020.

27. Finally, the DRC had to decide on the compensation to be paid to the Respondent based on the breach of contract without just cause by the Respondent.

28. In this regard, the Claimant is requesting the total amount of EUR X as outstanding remuneration and compensation for breach of contract.

29. In order to determine the amounts to be awarded, the DRC scrutinized the three employment contracts and the three image rights contracts and ascertain that the maximum value of all six contracts altogether was EUR X.

30. The Respondent owed to the Claimant the outstanding remuneration from February to May 2020 in the total amount of EUR X. Thus, the residual value of all six contracts is EUR X.

31. Confirmed the above, the DRC proceeded to analyse of the Claimant was able to mitigate his loses. In this regard, the DRC confirmed, as per the information available on TMS, that the Claimant had signed with a new contract on 16 June 2020 with the XXX FC (hereinafter "the New Contract") for the seasons 2020/2021 and 2021/2022, with the option to extend the duration for an additional season.

32. The Claimant's guaranteed remuneration under the New Contract is EUR X corresponding to salary agreed for both seasons.

33. Hence, the remuneration to be received by the Claimant under the New Contract exceeds the residual value of the Contract. For this reason and due to the duty of mitigating the financial losses, the mitigated compensation equals to zero.

34. Subsequently, the DRC ruled that the case at hand fulfills the requirements of art. 17.1.ii) of the Regulations in order to be awarded Additional Compensation under that precept.

35. Thus, the DRC decided that the Claimant is entitled to Additional Compensation in the amount of three monthly salaries at the value enjoyed by the Claimant at the time of termination.

36. The DRC confirmed that the monthly salary of the Claimant at the time of termination was EUR X under the Contract and the Image Rights Agreement. Therefore, the DRC granted an Additional Compensation to the Claimant in the total amount of EUR X net.

37. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber, the DRC decided that the Respondent must pay to the Claimant interest of 5% p.a. on the amount aforementioned amounts from the date of claim until the date of effective payment.

38. Furthermore, the DRC referred to par. 1 and 2 of art. 24bis 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 amount of outstanding remuneration.

39. In this regard, the DRC pointed out 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 amount is paid and for the maximum duration of three entire and consecutive registration periods.

40. Therefore, bearing in mind the above, the DRC decided that, in the event that the Respondent does not pay the amount due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.

41. The DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amount, in accordance with art. 24bis par. 3 of the Regulations.

42. The DRC decided that the request of the Claimant for procedural costs shall be rejected on the basis of art. 18 par. 4 of the Procedural Rules.

43. The DRC concluded its deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, X, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, X has to pay to the Claimant, the following amounts:

   - EUR X as outstanding remuneration plus 5% interest *p.a.* as from 3 September 2020 until the date of effective payment.
   - EUR X NET as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 3 September 2020 until the date of effective payment

4. Any further claims of the Claimant are rejected.

5. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.

6. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to **psdfifa@fifa.org**, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).

7. In the event that the amount due, plus interest as established above is not paid by the Respondent **within 45 days,** as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:

    1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid.
    (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
    2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.

For the Dispute Resolution Chamber:

Emilio García Silvero
Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 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 20 of the Procedural Rules).

CONTACT INFORMATION:

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