FIFA FOOTBALL TRIBUNAL

Decision of the Dispute Resolution Chamber

passed on 14 September 2022

regarding an employment-related dispute concerning the player Ralph Max Alexander Kerrebijn

BY:

Gonzalo de Medinilla (Spain)

CLAIMANT:

Ralph Max Alexander Kerrebijn, Netherlands
Represented by Dolf Segaar

RESPONDENT:

Club Budućnost, Serbia
Represented by Nenad Curkovic

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I. Facts of the case

1. On 16 August 2021, the Dutch player, Ralph Max Alexander Kerrebijn (hereinafter: *the Claimant*), and the Serbian club, Budućnost (hereinafter: *the Respondent*) signed an employment contract (hereinafter: *the contract*) valid as from 16 August 2021 until 30 June 2022.

2. As per article 3 par. 1 of the contract, the Claimant was entitled to "*a net monthly salary in the amount of [Serbian Dinar] ¨RSD 34,000 (EUR 290)*"

3. Additionally, article 3 par. 5 of the contract stipulated the following:

   "During the term of this Contract, the Club also undertakes to provide to the Player the following benefits: paid accommodation, paid meals, etc."

4. Article 4 par. 5 of the contract mentions:

   "The Club shall provide to the Player sports, medical and therapeutic care, free of charge (including regular medical and dental examination) and shall undertake preventive measures and educational activities to prevent doping. In accordance with legal regulations, the Club is responsible to keep records of Player's injuries while appearing for the Club."

5. On 3 December 2021, the Claimant and the Respondent concluded a termination agreement, according to which the parties agreed that:

   "1. Professional relationship agreement, br.186/21 from 16.08.2021, locked between " FK BUDUCNOST" and the player is being terminated on a mutual agreement.
   2. All the duties from both the club and the player were regulated in a timely manner, and there are no distractions for the contract to be terminated, as written down under point 1.
   3. The club is assigned to give the player all the documents needed to transfer to another club, or for travel abroad.
   4. The club still withholds the right on material compensation in accordance to the regulations posted by the FSS.
   5. The club and the player came to terms that they will both comply with these points stated.
   6. The record is made up of 4 equal copies, one belongs to the club, player, football association and the Football union"

6. In his claim, the Claimant explains that though the parties on 3 December 2021 agreed to prematurely terminate the contract, the termination agreement was only in the Serbian language and that he was not *"provided with an English version or any version in the FIFA language, nor was he given the opportunity to request a translation thereof."*

7. On 26 April 2022, the Claimant sent a notice of default to the Respondent requesting payment of the total amount of EUR 5,680, granting it 15 days to remedy the default.

8. On 4 May 2022, the Respondent replied to the default notice of the Claimant and mentioned the following:

"Regarding to your letter dated on April 26, 2022, I would like to inform you of the following.
Your client's Kerrebijan Ralph Max Alexander request is unfounded. Namely, all obligations towards your client have been settled and everything has been paid to him.
The fact that there are no obligations between the club and the players is also stated in Article 2 of the Mutual termination of the professional contract, which stipulates that all obligations and the rights of the club and the player are regulated in a timely manner, and there are no obstacles to terminating the agreement, as provided for in point 1 of these minutes.
I note that the practice all over the world is to determine the amount that the club owes to the player during the agreed termination of the contract, which was not done on this occasion, but it was clearly emphasized that all obligations were settled in a timely manner. In accordance with the above, we consider your request to be unfounded."

II. Proceedings before FIFA

9. On 13 June 2022, 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

10. According to the Claimant, he only recently became aware that the termination agreement contains a waiver for all claims the Claimant might have against the Respondent and indicated that if he was informed by the Respondent of the said waiver, he would not have signed the termination agreement.

11. In this context the Claimant explained that the Respondent *"has given him the impression that he signed for the termination of the employment agreement only"* – hence since the waiver is not written in one of the FIFA Languages, the Claimant is argued that the waiver is null and void.

12. Furthermore, the Claimant explained "*he was put under pressure and gave into to the signing of the termination agreement."*

13. Moreover, the Claimant mentioned that the outstanding amount as per his default notice has not been settled by the Respondent, neither did the Respondent provide proof of any subsequent payments made to the Claimant.

14. The requests for relief of the Claimant, were that the Respondent pay his outstanding remuneration in the total amount of EUR 5680 corresponding to the following:

(a) *EUR 1440 as overdue salaries for the duration of the contract*
(b) *EUR 3035 as accommodation & meals (estimated cost of living and food for the duration of the contract)*

(c) *EUR 120 as contract execution fees relating to the total cost of work visa in Serbia*
(d) *EUR 85 as medical expenses*
(e) *EUR 1000 as additional compensation for the egregious circumstances endured*

15. Additionally, the Claimant requested additional compensation equal to his salary for three months, being EUR 864 (3x EUR 288).

16. In conclusion the Claimant mentioned the following:

"The FIFA Dispute Resolution Chamber is requested to order the Club to pay to the Player on the abovementioned bank account an amount of in total EUR 6544 within 14 days after rendering its decision on forfeit of a penalty of EUR 2500 for each day it will be in breach of complying with the decision."

b. Position of the Respondent

17. According to the Respondent, all of the demands of the Claimant should be rejected as inadmissible.

18. In this context, the Respondent indicated that the parties concluded a termination agreement, and that the Claimant was clearly aware of the content of the termination agreement that he signed, in this regard the Respondent mentioned:

- *"no pressure was exerted on the player to sign the contract termination agreement, because if there had been any kind of pressure by someone from the Club, it would have been a valid reason for the Player to unilaterally terminate the contract, according to FIFA practice. The player did not go that way but allegedly signed an agreement whose contents he was not aware of*
- *the agreement was certified by a notary. If the notary determined that the Claimant did not know the Serbian language or did not understand the content of the document he was signing, it would not have been certified*."

19. Moreover, the Respondent indicated that the contract was terminated by agreement at the request of the Claimant, *"who claimed that he had found a better club".*

20. Furthermore, the Respondent mentioned that *"the claim that the player paid for the apartment himself is not true, because all the rents were paid by the club, as it is paid to other players as well. It is not true that the Claimant by himself paid the tax to the Serbian states in the amount of 13,970,00 dinars - not a single proof was provided for both of these claims."*

21. In conclusion the Respondent requested the following relief:

"i. to rule that FIFA is not competent to decide on the present matter;
ii. to reject the claim as inadmissible;
iii. to rule that the Claimant shall bear any and all costs of the proceedings

Subsidiarily

i. to rule that no breach of contract occurred by our club and that the outstanding salaries towards the Claimant amount to only 1.440 euros;
ii. to reject the oh claim as groundless;
iii. to rule that the Claimant shall bear any and all costs of the proceedings."

c. Additional Comments Claimant

22. In reply to the statement of the Respondent and its allegations that all dues have been settled to the Claimant, the Claimant denied all that has been brought forward by the Respondent.

23. The Claimant indicated that indeed wanted to terminate his contract with the Respondent for multiple reasons, mainly due to the fact that the Respondent failed comply with the contractual obligations as detailed in the contract concluded between the parties.

24. Furthermore, the Claimant referred to the notarial deed and the termination agreement and indicated that these documents were not translated into one of the official languages of FIFA and should be considered null and void. The Claimant mentioned that *"the certified translations thereof are for reasons of this procedure for the first time provided by the Club with its statement of 19 July 2022."*

25. The Claimant further denied the receipt of payments relating to his salary, accommodation, transportation, visa and the like, hence he mentioned that it should be proven by the club,*" if its statement of payment is correct (which it is not)."*

26. The Claimant further mentioned that *"it is striking that the Respondent, as a subsidiary defense, wishes to limit the claim of the Player to an amount of EUR 1440 - apparently recognising "that despite its defense that all amounts have been paid, this amount has not yet been paid. The Club's primary defense that everything would have been paid, thus becomes completely implausible."*

27. Additionally, the Claimant mentioned that at no point the Respondent has *"failed to treat the Player respectfully, failed to communicate with the Player as neither the sport director, the club's secretary, nor any member of the technical board speaks any English, and failed to make the Player feel safe in a foreign country."*

28. Moreover, the Claimant would have never signed the termination agreement *"if he had known that it mentioned that the club does not own the Player any form of compensation - the Player was never informed by anyone of the Club that the termination contract had a provision of such content, nor did the notary in the village of Dobanovci. Since the Club did in fact not "regulate all its obligations in a timely manner" paragraph 2 of the termination agreement is clearly false and misleading."*

29. In regard to the visit to the notary relating to the execution of the termination agreement, the Claimant mentioned that:

"None of the club representatives spoke any form of English and at the notary nobody had asked the Player if he understand or speaks the Serbian language. The Club's secretary had come with the Player to the notary and did all the talking. The Player was not asked a single question and the representatives at the notary also did not communicate in English." The Club had the obligation to translate the termination agreement into a FIFA recognized language which it failed to do. The fact remains that the contract was never shown to the Player in a language that he understands and the Player would have never signed the termination if he had understood the conditions."

30. Furthermore, the Claimant emphasised that he never felt safe at the club and mentioned that the Respondent's representatives have a *"known reputation for being aggressive, confrontational and threatening."* In this regard the Claimant provided a testimony from Mr. Mohamad Shamkhi a former colleague of the Claimant at the Respondent.

31. In conclusion the Claimant reiterated his claim as requested.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

32. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *Single Judge*) 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 13 June 2022 and submitted for decision on 14 September 2022. Taking into account the wording of art. 34 of the June 2022 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.

33. Subsequently, the Single Judge 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 (July 2022 edition), the Single Judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Dutch player and a Serbian club.

34. However, the Single Judge acknowledged that the Respondent made a statement in its submission regarding the competence of FIFA's deciding bodies. In this context after having analysed the information on file, the Single Judge noted that the Respondent did not further substantiate its statement and hence established that the Respondent's objection towards the competence of FIFA to deal with the present matter has to be rejected.

35. Subsequently, the Single Judge 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 (July 2022 edition), and considering that

the present claim was lodged on 13 June 2022, the March 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

36. 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 he 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

37. His 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 he 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

38. The foregoing having been established moved to the substance of the matter and took note of the fact that the parties strongly dispute the content of the termination agreement concluded between the parties on 3 December 2021.

39. In this context, the Single Judge acknowledged that his task was to determine whether the amounts claimed by the Claimant were to be paid by the Respondent.

40. The Single Judge noted that in its submissions, the Respondent denied owing the Claimant any monies and, in this regard, it made reference to point 2 of the termination agreement concluded between the parties arguing that *(i) the Claimant was clearly aware of the contents thereof, (ii) no pressure was exerted on the Claimant to sign same; and (iii) that it was concluded at the request of the Claimant.*

41. The Single Judge further noted that the Claimant on his account argued that he indeed wanted to terminate his contract with the Respondent for multiple reasons, mainly due to the fact that the Respondent failed to comply with its contractual obligations, however that he would never have signed the untranslated termination agreement if he was aware of the waiver regarding compensation.

42. In this context, the Single Judge noted that Respondent provided a termination agreement in the Serbian language and requested the Claimant to sign it, specifically considering that the

Respondent knew that the Claimant did not speak Serbian, as also admitted by the Respondent in its submission that the termination agreement was provided to the Claimant in Serbian. The latter fact does not render a signed agreement invalid *per se*, but the Single Judge does highlight that based on the principle of good faith and a club's duty of care, the Respondent should have translated the termination agreement so that the Claimant could have understood what he signed, therewith also reducing the risk for disputes.

43. At the same time, the Single Judge was critical on the Claimant remarking that he should not have signed a document in a language he did not understand and should have insisted on receiving the relevant translation before signing the document.

44. Taking into account the documentation presented by the Claimant, the Single Judge concluded that the Claimant had duly substantiated his claim pertaining to his outstanding salaries, accommodation cost and medical expenditure with sufficient documentary evidence, however the Claimant failed to provide corroborating proof of his actual expenditure and/or cost relating to the following, which led the Single Judge to reject this part of his claim:

- *meals (food for the duration of the contract)*
- *EUR 120 as contract execution fees relating to the total cost of work visa in Serbia*

45. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the total amount of EUR 2,425 which were outstanding, corresponding to:

- EUR 290 x 5 months' salary (June until December 2021) as outstanding salaries
- EUR 900 as accommodation cost
- EUR 85 as medical expenses

46. In addition, the Single Judge noted that the Claimant did not request any interest to be granted on the outstanding amounts, hence no further interest was awarded in line with the principle *ne ultra petita*.

ii. Art. 12bis of the Regulations

47. In continuation, bearing in mind the foregoing considerations, the Single Judge referred to art.12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations. In this respect, she confirmed that the Respondent failed to comply with its financial obligations in line with the contract, without a *prima facie* justification, and was duly notified of the contractual breach by the Claimant, who granted the Respondent at least 10 days to cure its default, to no avail.

48. The Single Judge established that in virtue of art. 12bis par. 4 of the Regulations she has competence to impose sanctions on the Respondent.

49. Moreover, the Single Judge referred to art. 12bis par. 6 of the Regulations, which establishes that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty.

50. Bearing in mind the above and taking into account that this is a second offense of the Respondent in the past two years, the deciding body decided to impose a reprimand on the Respondent in accordance with art. 12bis par. 4 lit. a) of the Regulations.

iii. Compliance with monetary decisions

51. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24 par. 1 and 2 of the Regulations, which stipulate that, with his 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.

52. 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.

53. Therefore, bearing in mind the above, the Single Judge 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.

54. 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.

55. 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

56. 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.

57. 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.

58. Lastly, the Single Judge concluded her 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, Ralph Max Alexander Kerrebijn, is partially accepted.

2. The Respondent, Budućnost, has to pay to the Claimant, the following amounts:

   - EUR 1,440 as outstanding remuneration
   - EUR 900 as accommodation cost
   - EUR 85 as medical expenses

3. Any further claims of the Claimant are rejected.

4. A reprimand is imposed on the Respondent.

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 the ban shall be of 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 article 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).

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