

**Decision of the
Single Judge the sub-committee of the Dispute
Resolution Chamber (DRC)**

Passed on 6 August 2020,

regarding solidarity contribution for the transfer the player Ante Rebić

BY:

Roy Vermeer (the Netherlands), Single Judge of the sub-committee of the DRC

CLAIMANT:

NK IMOTSKI, Croatia

Represented by Mr. Jan Schweele

RESPONDENT:

AC MILAN, Italy

I. FACTS OF THE CASE

1. According to the player passport issued by the Croatian Football Federation, the player, Ante Rebić (hereinafter: *Rebić*), born on 21 September 1993, was registered with the following Croatian clubs:

Season	Club	Dates	Status	Type of registration
12th Birthday	FC Vinjani (Donji)	01-07-2005 to 31-06-2006	Amateur	Permanent
13th Birthday	FC Vinjani (Donji)	01-07-2006 to 31-06-2007	Amateur	Permanent
14th Birthday	FC Vinjani (Donji)	01-07-2007 to 30-06-2008	Amateur	Permanent
15th Birthday	FC Vinjani (Donji)	01-07-2008 to 20-08-2008	Amateur	Permanent
	FC Imotski	27-08-2008 to 30-06-2009	Amateur	Permanent
16th Birthday	FC Imotski	01-07-2009 to 30-06-2010	Amateur	Permanent
17th Birthday	FC Imotski	01-07-2010 to 14-07-2010	Amateur	Permanent
	RNK Split	18-08-2010 to 30-06-2011	Professional	
18th Birthday	RNK Split	01-07-2011 to 30-06-2012	Professional	Permanent
19th Birthday	RNK Split	01-07-2012 to 30-06-2013	Professional	Permanent
20th Birthday	RNK Split	01-07-2013 to 20-08-2013	Professional	Permanent

2. The football season in Croatia runs as follows:
 - a. until 1 July 2005, from 1 August to 31 July of the following year;
 - b. after 1 July 2005, from 1 July to 30 June of the following year.
3. As shown above, Rebić was registered with the club NK Imotski (hereinafter: *the Claimant*) from 27 August 2008 to 14 July 2010.
4. According to the information available on the Transfer Matching System (TMS), on 10 January 2018, following the execution of an employment agreement between the German club, Eintracht Frankfurt (hereinafter: *EF*) and Rebić, the latter was permanently registered with EF.
5. According to the information available on TMS, on 1 September 2019, EF entered two transfer instructions in said system, both having the Italian club, AC Milan (hereinafter: *the Respondent* or *ACM*) as counter-instructing club:

- a. the first one, at 10h47 Swiss time, to engage the Portuguese player André Miguel Valente da Silva (hereinafter: *Silva*) from ACM on loan. Such instruction read “engage free of payment on loan international”;
 - b. the second one, at 11h11 Swiss time, to release Rebić to ACM on loan. Such instruction read “release free of payment on loan international”;
6. On 2 September 2019, EF, Rebić and the Respondent executed a free loan transfer agreement, valid for two seasons, by means of which the services of Rebić were temporarily transferred from EF to the Respondent (hereinafter: *the First Loan*).
 7. On the same day, EF, Silva and the Respondent executed a free loan transfer agreement, valid for two seasons, by means of which the services of Silva were temporarily transferred from the Respondent to EF (hereinafter: *the Second Loan*).
 8. According to the information available on TMS, on 2 September 2019 the following events took place. All hours shown below are in Swiss time:

Time	Player	Active Subject	Event
16h35	Rebić	ACM	Entered a new transfer instruction to engage Rebić.
18h00	Silva	EF	Confirmed its own transfer instruction.
18h01	Rebić	EF	Confirmed its own transfer instruction.
18h04	Silva	ACM	Entered a new transfer instruction to release Silva, which was paired by TMS with EF’s matching instruction.
18h07	Rebić	ACM	Confirmed its own transfer instruction, which was paired by TMS with EF’s matching instruction.
19h39	Silva	n/a	Silva was registered with the <i>Deutscher Fussball-Bund</i> (DFB).
22h05	Rebić	n/a	Rebić was registered with the <i>Federazione Italiana Giuoco Calcio</i> (FIGC).

II. PROCEEDINGS BEFORE FIFA

a. Claim of the Claimant

9. On 7 July 2020, the Claimant filed the claim at hand against the Respondent.
10. The Claimant submitted that the transfers of Rebić and Silva between ACM and EF correspond to an exchange of players. Hence, it argued that it is entitled to receive solidarity contribution from the Respondent.
11. In particular, the Claimant argued that the two transfers at stake are “*not a common practice in the football world when we refer to loan agreements, since these are made for shorter periods of time (half of a season or a full season) and normally involve young players eager to*

be fielded in order to develop themselves or, when not involving young players, they involve, at least, a compensation for the temporary transfer”.

12. The Claimant filed four news articles in support of the alleged exchange of players, quoting the Football Director and Head Coach of EF respectively as follows: *“If everything works, tomorrow Silva will wear our shirt and Rebić will be in Milan”* and *“All involved parties are basically happy. We followed Rebić’s wish to transfer to a big club. It was a good option that - with Silva - there was a player at Milan who we had been very interested in for weeks but who was too expensive”*.
13. The Claimant further submitted, with regards to Silva, that he was involved in previous valuable transfers, and therefore that it would not make sense for him to be loaned for free to EF. The Claimant is of the position that both Rebić and Silva are valuable players.
14. Additionally, the Claimant argued that according to the FIFA Dispute Resolution Chamber jurisprudence, solidarity contribution must be calculated and distributed in case of temporary transfers where the compensation is not a direct financial payment but an exchange of players, which will always have a financial value. In this respect, the Claimant deemed that the First Loan and the Second Loan should be seen *“necessarily as one”*, since they *“have been concluded between the same parties, for the same period of time, registered on the same day, in regard to high valuable players”*.
15. With regards to the calculation of the amount corresponding to the transfer, the Claimant reverted to FIFA and CAS jurisprudence, in particular CAS 2016/A/4821, and deemed that both players’ market value was EUR 40,000,000. Accordingly, it calculated the transfer compensation as follows (quoted *verbatim*):

*“40,000,000.00 € / 4,5 (average of the players contracts) x 2 (duration of the loan) - 40% =
10,666,666.67 €”*

16. The Claimant requested the following relief:

*“1. To sentence the Respondent to inform the Claimant about any compensation paid to the Former Club or any future payments (such as sell-on clauses, bonus payments, exchange of players) in respect to the above-mentioned transfer,
2. to sentence the Respondent to inform the Claimant about all contractual clauses with relevance regarding the payment of solidarity contribution,
3. to sentence the Respondent to pay the Claimant solidarity contribution in the amount of 0.73 % of this compensation plus 5% interests p.a. as of the due dates.”*

b. Reply of the Respondent

17. The Respondent, for its part, rejected the Claimant’s claim in a short submission, arguing that the transfer of Rebić to EF was free of payment and therefore no solidarity contribution was due to the Claimant.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

18. First of all, the Single Judge of the sub-committee of the DRC (hereinafter: *the Single Judge*) analysed whether he was competent to deal with the matter at stake. In this respect, he took note that the present matter was presented to FIFA on 7 July 2020 and submitted for his consideration on 6 August 2020. Taking into account the wording of art. 21 of the June 2020 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 (cf. article 21 of the Procedural Rules).
19. Subsequently, the Single Judge referred to art. 3 of the Procedural Rules, which states that the Dispute Resolution Chamber shall examine its jurisdiction in light of arts. 22 to 24 of the FIFA Regulations on the Status and Transfer of Players (edition June 2020). In accordance with art. 3 of Annexe 6 in conjunction with art. 24 par. 3 and art. 22 lit. d) of the Regulations on the Status and Transfer of Players, the Single Judge is competent to decide on the present dispute relating to solidarity contribution between clubs belonging to different associations handled through TMS. Such competence is not disputed by the parties.
20. Furthermore, and taking into consideration that Rebić was registered with the Respondent on 2 September 2019, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition June 2020), the June 2019 edition of the Regulations on the Status and Transfer of Players (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
21. The competence of the Single Judge and the applicable regulations having been established, the Single Judge entered into the substance of the matter. The Single Judge started by acknowledging the above-mentioned facts of the case as well as the documentation on file. However, the Single Judge emphasized that in the following considerations he will refer only to the facts, arguments and documentary evidence which he considered pertinent for the assessment of the matter at hand.

b. Burden of proof

22. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 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. 12 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties.

23. In this respect, the Single Judge 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.

c. Merits of the Dispute

24. First of all, the Single Judge noted that the Claimant lodged a claim against the Respondent for payment of the relevant proportion of solidarity contribution in connection with the transfer of Rebić from EF to the Respondent. In particular, the Single Judge noted that the Claimant alleged that the transfer of said player from EF to the Respondent was connected to the transfer of Silva from the Respondent to EF. According to the Claimant, such constellation constitutes an exchange of players, thereby referring to jurisprudence of the DRC according to which an exchange of players has financial content.
25. Likewise, the Single Judge acknowledged that the Claimant held that, therefore, the relevant value of the transfer of Rebić to the Respondent shall be calculated considering the market value of the players involved.
26. The Single Judge further noticed that the Claimant, in support of its position, referred to mass media articles, which, supposedly, referred to the transfer of Rebić from EF to ACM being connected to the transfer of Silva in the opposite direction.
27. In continuation, the Single Judge took due note that the Respondent rejected the argumentation brought forward by the Claimant, and submitted that the transfer of Rebić from EF to ACM was concluded free of charge.
28. In light of the foregoing, the Single Judge deemed that he had to establish as to whether an obligation to distribute a proportion of the solidarity contribution had arisen out of the transfer of Rebić from EF to the Respondent. More in particular, the Single Judge highlighted that the underlying issue in this dispute, considering the diverging position of the parties, was to determine whether the transfer of Rebić from EF to the Respondent was a free loan transfer or not. The Single Judge also underlined that, subsequently, if it was found that such transfer was not concluded free of charge, it would be necessary to determine the consequences *vis-à-vis* the obligation of payment of the solidarity contribution in accordance with art. 21 and Annexe 5 of the Regulations.
29. In this respect, the Single Judge made reference to art. 21 of the Regulations, according to which any club that has contributed to the education and training of a player shall receive a proportion of the compensation paid to the player's former club. Consequently, the Single Judge went on to examine as to whether compensation was in fact paid in connection with the transfer of Rebić from his former club, EF, to the Respondent.
30. In this sense, the Single Judge firstly recalled the aforementioned principle of the burden of proof, as established in art. 12 par. 3 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. Given the fact that the Claimant argued that the transfers of Rebić from EF to ACM, and of Silva from ACM to EF, constituted an exchange of players, the Single Judge was firm to decide that it was incumbent on the Claimant to prove such allegation.

31. Bearing in mind the foregoing considerations, the Single Judge went on to examine the documentation available to him. In this respect, the Single Judge stressed that, according to the information and documentation entered in TMS on the occasion of the transfer of Rebić from EF to the Respondent, the latter engaged Rebić on a loan transfer free of charge.
32. Likewise, the Single Judge noted that the Respondent uploaded in TMS the loan agreement signed with EF regarding the loan transfer of Silva, which was also free of charge.
33. Accordingly, the Single Judge emphasized that according to the documentation available in TMS, the transfers of the players concerned, Rebić and Silva, were not concluded on the basis of the same contract, but in fact by means of two separate agreements. The Single Judge further observed that such agreements - in spite of having been concluded on the same day, leading to two concomitant transfer instructions in TMS - neither refer to each other, nor refer to any other footballer with the exception of the one being transferred. In other words, the Single Judge could determine from the cited documentation that the First Loan only refers to Rebić and the Second Loan only refers to Silva.
34. Accordingly, the Single Judge determined that, *prima facie*, the two transfers must be analysed separately, since the mere fact that the same clubs were involved in two different transfers for two different players on the same date does not necessarily mean that such clubs engaged in an exchange of players.
35. Notwithstanding the above, the Single Judge recalled that, as a general principle, any transfer agreement – including a loan transfer agreement – represents a bilateral agreement, and consequently, a mutual exchange of obligations between the parties. To this extent, the Single Judge referred to the longstanding and well-established practice of the DRC and the Court of Arbitration for Sport, which confirm such assessment.
36. In continuation, the Single Judge acknowledged that a transfer contract, which deals with a mutual exchange of obligations between the contractual parties involved as outlined above, can, *inter alia*, involve the payment of a fee or indeed be in the form of an exchange of players.
37. However, the Single Judge considered that, in the matter at hand and based on the foregoing considerations, no such mutual exchange of obligations with respect to Rebić had been agreed upon by and between EF and the Respondent.
38. What is more, the Single Judge considered that the mass media articles presented by the Claimant cannot be considered sufficient evidence corroborating the Claimant's allegations. To this extent, the Single Judge found the documentation filed by the Claimant to be merely

speculative since, conversely to the arguments raised by the Claimant, neither of the parties' representatives admitted in the cited media articles that the players Rebić and Silva were traded one for the other.

39. In conclusion, the Single Judge decided that while it seems at first sight that the transfers of Rebić and Silva are connected, the Claimant has not sufficiently discharged its burden of proof to demonstrate, to a comfortable satisfaction degree, that a mutual exchange of obligations with respect to Rebić was agreed upon by and between EF and the Respondent.
40. The Single Judge hence concluded, in the absence of evidence to the contrary, that the transfers of the players Rebić and Silva were two separate transfers and, thus, that he had no alternative but to reject the Claimant's allegation that an exchange of players took place.
41. Consequently, and with reference to art. 21 of the Regulations, the Single Judge held that there was no basis for the Claimant's claim for solidarity contribution against the Respondent in relation to Rebić, and, therefore, decided to reject the Claimant's claim in its entirety.

d. Costs

42. Lastly, the Single Judge referred to the temporary amendments outlined in art. 18 par. 2 lit. ii) of the Procedural Rules, which entered in force in 10 June 2020, according to which no procedural costs shall be levied for any claim lodged between 10 June 2020 and 31 December 2020 (both inclusive), and determined given that the claim at hand was lodged on 7 July 2020, the decision shall be rendered free of costs.

IV. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, NK IMOTSKI, is rejected.
2. The decision is rendered free of costs (cf. art. 18 para. 1 num. i) of the Procedural Rules.

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:

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