

# Decision of the Dispute Resolution Chamber

passed on 23 June 2022

regarding an employment-related dispute concerning the player  
Stanley Ronny Willem Elbers

**BY:**

**Clifford J. Hendel (USA & France)**  
**Gonzalo de Medinilla (Spain)**  
**Mario Flores Chemor (Mexico)**

**CLAIMANT:**

**Stanley Ronny Willem Elbers, Netherlands**  
Represented by Ms Suzanne Bakker

**RESPONDENT:**

**AFC Hermannstadt, Romania**

## I. Facts of the case

1. On 10 September 2020, the Dutch player Stanley Ronny Willem Elbers (hereinafter *the Claimant* or *the player*) and the Romanian club AFC Hermannstadt (hereinafter *the Respondent* or *the club*) concluded an employment agreement (hereinafter *the Employment Agreement*) valid as from 10 September 2020 until 30 June 2022.
2. In Clause IV of the Employment Agreement, Claimant and Respondent (jointly referred to as the *Parties*) agreed upon, inter alia, the following payments:
  - EUR 8,500 as monthly salary, payable “until the 25<sup>th</sup> of the month following the month for which the payment is made”, whereas “the salary of September 2020 will be paid on 20.09.2020”;
  - EUR 10,000 as a sign-on fee payable on 15 September 2020;
  - EUR 300 as monthly “equivalent of house rent”.
3. In Clause XII of the Employment Agreement, the Parties agreed upon the following jurisdiction clause:

*“XII. Dispute settlement*

*The Parties shall, in good faith, make every effort to solve amicably any dispute, controversy or misunderstanding arising out of or in connection with this Contract. Disputes concerning the conclusion, execution, amendment, suspension or termination of this contract shall be settled by the jurisdictional commissions of the FIFA or by the courts materially and territorially competent, when the above-mentioned jurisdictional commissions do not have jurisdiction to settle the dispute. Specifically, any disputes arising from the performance of this contract shall be settled by the National Dispute Resolution Chamber within the FRF, its decisions may be appealed to the Appeal Commission within the FRF.”*

4. On 28 January 2021 and 1 March 2021, the Claimant sent a default notice to the club, requesting certain outstanding amounts.
5. On 30 September 2021, insolvency proceedings were open against the Respondent in Romania.
6. On 17 December 2021, the Claimant was notified of the termination of the employment relationship by a decision of the Sibiu Tribunal of 30 September 2021 related to the insolvency proceedings of the club:

*“Mr. Stanley Ronny Willem professional footballer*

*Subscribed to Ideal Insolv SPRL, as judicial administrator of the debtor Association Football Club Hermannstadt, according to the Conclusion of the syndic judge no. 354 of 30.09.2021 pronounced by the Sibiu Tribunal, in file no. 2326/85/2021, pursuant to art. 123 al. 1 of*

*Law no. 85/2014 - on insolvency prevention and insolvency proceedings and based on the report of the association's management in order to maximize the associations assets and reduce expenses whose value clearly exceeds the value of benefits, I hereby inform you:*

**NOTIFICATION**

*Art. 1. Starting with the date of receipt of this notification, your sports activity contract no. 781 of 10.09.2020 is considered denounced.*

*Art.2. An appeal may be lodged against this notification with the Sibiu Tribunal according to art. 41 al. 4 of law 85/2014."*

7. On 28 December 2021, the Claimant requested the amount of EUR 45,500 to be listed on the list of creditors within the insolvency proceedings.
8. On the same day, the Claimant requested a "cancellation" of the notification dated 17 December 2021 in front of the Romanian civil tribunal, Sibiu Court of Law.
9. On 15 February 2022, the Claimant sent a letter to the Respondent, alleging that the club did not have just cause to terminate the Employment Agreement and that, consequently, it should pay a compensation.
10. On 17 March 2022, the Claimant was notified of the following regarding the "cancellation" of the notification dated 17 December 2021:

FOR THESE REASONS, IN  
THE NAME OF THE LAW  
DECIDES

It admits the exception of the material incompetence of the Sibiu Tribunal invoked in the case, and, consequently: Declines the competence to solve the action formulated by the plaintiff Elbers Stanley Ronny Willem, domiciled in place. Sibiu, str. Avrig, no. 4-8, sc. B, ap. 25, Sibiu county, in contradiction with the defendant Fotbal Club Hermannstadt, in insolvency, CUI RO 34826156, with headquarters in place. Sibiu, str. Nicolae Teclu, no. 14, Sibiu county, through judicial administrator Ideal Insolv SPRL, CIF 37552691, with headquarters in place. Sibiu, str. Albabei Ioan, no. 12, Sibiu County, in favor of the Sibiu Tribunal - Section II Litigation with Professionals.

11. On 18 March 2022, the Claimant was notified of the following regarding the outstanding amounts:

To:  
Dr. Elbers Stanley Ronny Willem

**Verification report of the claim application**

Following the verification of your claim filed at the Sibiu court on 28.12.2021, we found the following aspects :

Your claim amounting to 42500 euros (equivalent to 223,659.28 lei) representing salary rights and 2700 euros (13362 lei ) representing rent rights, consists of:

- a) 17.900 euros of which: 17.000 salary rights for the period August-September 2021 to which is added the remaining rent of 900 euros for the period July-September 2021
- b) 22.142 euros of which: 21.387 euros salary rights for the period 01.10.2021-17.12.2021 (8.500 oct. + 8.500 nov. +4.387 for 01.12.2021-17.12.2021)
- c) 2.458 euros undue amount due to the fact that you rounded up the salary rights related to December 2021 to the full month.

Considering the provisions of art. 102 of Law 85/2014, only receivables preceding the date of the insolvency procedure

Opening shall be entered in the statement of affairs , following that *"the receivables born after the date of opening the procedure, during the observation period or during the judicial reorganization procedure to be paid according to the resulting documents, it is not necessary to*

*register within the statements of affairs "*

Based on these legal provisions, the amount of 17.900 euros, is an amount prior to the opening of the procedure, will be entered in the debtor's statement of affairs in the category of unsecured claims and will be paid in installments according to the approved reorganization plan.

I would also like to inform you that the proposed reorganization plan was approved by the creditors' meeting at the meeting of 18.02.2022 and your claim was registered in the category of unsecured receivables , a category that benefits from a payment percentage of 20% of its value.

The other amount of 22.142 euros, an account receivable born after the date of opening the procedure, will be paid in 100% of its value, in the next period within the limits of the amounts available to the association.

You can appeal against this report within 7 days from the communication according to art. 59 of Law 85/2014. A copy of the appeal shall be urgently communicated to the judicial administrator.

Date: 18.03.2022

Judicial liquidator, Ideal Insolv SPRL  
by ec. Marcu Mariu



## II. Proceedings before FIFA

12. On 2 March 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

13. The requests for relief of the Claimant, were the following:

**"EUR 38,387.10 net ("salary") and EUR 1,654.83 net ("housing allowance") as outstanding remuneration, plus 5% interest p.a. as follows:**

- 5% interest p.a. on the amount of EUR 300 net (Housing July 2021) as from 26 August 2021 until the date of effective payment;

- 5% interest p.a. on the amount of EUR 8,500 (Salary August 2021) and EUR 300 net (Housing August 2021) as from 26 September 2021 until the date of effective payment;
- 5% interest p.a. on the amount of EUR 8,500 (Salary September 2021) and EUR 300 net (Housing September 2021) as from 26 October 2021 until the date of effective payment;
- 5% interest p.a. on the amount of EUR 8,500 (Salary October 2021) and EUR 300 net (Housing October 2021) as from 26 November 2021 until the date of effective payment;
- 5% interest p.a. on the amount of EUR 8,500 (Salary November 2021) and EUR 300 net (Housing November 2021) as from 26 December 2021 until the date of effective payment;
- 5% interest p.a. on the amount of EUR 4,387.10 (Salary December 2021) and EUR 154.83 net (Housing December 2021) as from 26 January 2022 until the date of effective payment;

**“EUR 55,112.90 net (“salary”) and EUR 1,945.17 net (“housing allowance”) as compensation for breach of contract, plus 5% interest p.a. as from 17 December 2021 until the date of effective payment.”** (emphasis added).

14. The Claimant alleged that the *“Club unlawfully failed to pay the Player four monthly salaries from August 2021 to December 2021 and nine housing allowances as agreed in the Contract and thus has an undisputed debt towards the Player”* and that, in line with the legal principle *pacta sunt servanda*, the Respondent is obliged to pay the outstanding amounts as well as the compensation for breach of contract.

#### **b. Position of the Respondent**

15. The Respondent rejected the claim of the Claimant as it alleged that the claim is inadmissible:

*“a. on the one hand, the inadmissibility results from FIFA's lack of competence to analyze disputes in connection with the Sports Activity Contract no. 781/10.09.2020, the parties agreeing that these disputes be adjudicated by the jurisdictional commissions of the Romanian Football Federation. In this regard, we have shown that these commissions meet all FIFA criteria in terms of independence and impartiality;*

*b. on the other hand, the inadmissibility must be established by virtue of the fact that all the requests of the Player that are the subject of this Claim have been addressed to the national ordinary courts. Since the player has chosen the internal solution path, he must follow it to the end, being stopped to choose another procedural path in an excess of forum shopping.”*

### III. Considerations of the Dispute Resolution Chamber

#### a. Competence and applicable legal framework

16. 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 02 March 2022 and submitted for decision on 23 June 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.
17. 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 lit. b) of the Regulations on the Status and Transfer of Players (March 2021 edition), the Dispute Resolution Chamber is, in principle, competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Dutch player and a Romanian club.
18. Nonetheless, the Chamber then turned its attention to the arguments of the Respondent that FIFA is not the competent forum to deal with the dispute.
19. In this respect, the Chamber referred to Clause XII of the Employment Agreement, according to which: *"Disputes concerning the conclusion, execution, amendment, suspension or termination of this contract shall be settled by the jurisdictional commissions of the FIFA or by the courts materially and territorially competent, when the above-mentioned jurisdictional commissions do not have jurisdiction to settle the dispute. Specifically, any disputes arising from the performance of this contract shall be settled by the National Dispute Resolution Chamber within the FRF, its decisions may be appealed to the Appeal Commission within the FRF."*
20. The Chamber, after analysing the wording of the jurisdiction clause, concluded that such clause did not clearly and exclusively establish the competence of the NDRC of Romania, in accordance with art. 22 par. 1 lit. b) of the aforementioned Regulations.
21. As a consequence, the Chamber was of the opinion that the first pre-requisite for establishing the competence of an NDRC was not met, and therefore, without the need to enter the analysis of any further requirement, it established that the Respondent's objection to the competence of FIFA in view of the above-mentioned clause has to be rejected.



22. At this point the Chamber noted that the Respondent further objected to the admissibility of the present claim as to the outstanding payments, alleging that an identical dispute between the Parties had already been decided upon by the judicial liquidator of the respective Romanian court in the context of the insolvency proceedings on 18 March 2022 and, as such, FIFA would no longer be allowed to deal with the claim at stake by virtue of the application of the legal principle of *res judicata*.
23. In this respect, the DRC recalled that the *res judicata* principle precludes a subsequent decision about the same object, among the same parties, relying on the same facts and based on the same cause of action. Accordingly, if a matter (with *res judicata*) is brought again before the deciding authority, the latter must dismiss the matter.
24. Having said that, the Chamber went on to analyse the evidence on file regarding the previous decision allegedly passed in an identical matter. In this respect, the Chamber observed that indeed the outstanding amounts have been validly considered within the respective insolvency proceedings and shall be paid in instalments to the according to the approved reorganization plan (see I./ par. 11.).
25. On account of the above, the Chamber concluded that both legal actions not only concern identical parties to the dispute but also identical objects and requests for relief. Therefore, as a competent deciding body has already dealt with the exact same matter, passing a final and binding decision, the present case is affected by *res judicata* and FIFA is not in a position to deal again with the claim concerning the outstanding payments. Thus, this part of the claim is inadmissible.
26. Finally, the DRC noted that immediately after the termination of the Employment Agreement, the Claimant requested a “cancellation” of the notification dated 17 December 2021 in front of the Romanian civil tribunal, which passed a decision on its competence on 17 March 2022, referring the dispute to a different section of the respective civil court (see I./ par. 10.).
27. At this point, the DRC deemed it important to underline that in the spirit of the applicable regulations, a player who actively decides to bring forward a dispute before a local deciding body, rather than making use of the alternative dispute resolution process proposed within the legal framework of FIFA, must demonstrate consistency in relation to the choice of the course of action.
28. In this respect, based on the evidence on file, the DRC noted that the Claimant challenged the termination of the contract in front of the civil courts in Romania (*i.e.* trying to cancel the said termination), whereas, at the same time, he seeks compensation resulting from the termination in front of FIFA.

29. In this respect, the DRC held that it cannot condone the attitude of a party who at first decides to submit a labour dispute to a competent, specific, local deciding body, and subsequently decides to submit this very same dispute (between the same parties, based on the same legal framework) to FIFA; the same is to be noted if the party submits a claim before FIFA and thereafter seeks to lodge the same claim in front of different national bodies. Finally, the Chamber emphasised that a party who chooses a certain course of legal remedy may not then decide to change the legal forum of the dispute, as this would jeopardise the credibility of the sporting dispute resolution system.
30. In this respect, the Chamber referred to the principle of *electa una via, non datur recursus ad alteram* and understood that in the present case the Claimant elaborated and developed an inconsistent procedural strategy, known as Forum Shopping, by lodging several claims before different competent deciding bodies with a view to obtain the most advantageous possible outcome. Consequently, the Chamber concluded that the Claimant's claim concerning the compensation for the alleged breach of contract in front of FIFA is equally inadmissible.

#### **b. Costs**

31. 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.
32. 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.
33. 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, Stanley Ronny Willem Elbers, is inadmissible.
2. 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).

#### **CONTACT INFORMATION**

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