

Decision of the Dispute Resolution Chamber

passed on 6 April 2022

regarding an employment-related dispute concerning the player Idriz Batha

BY:

Tomislav KASALO (Croatia), DRC Judge

CLAIMANT:

Player Idriz Batha, Albania

RESPONDENT:

Club Athlitiki Enosi Larissa FC, Greece

I Facts

1. Following a previous procedure before FIFA (18-01505) and CAS, on 18 May 2021, Idriz Batha and Club Athlitiki Enosi Larissa FC concluded a settlement agreement with the following conditions:
" 2.1 AEL shall pay as a settlement amount EUR 181 ,000 (one hundred eighty one thousand euros) to the Player for the full and final settlement of the Claim (capital and interest) and of any and all issues related to the Claim. The payment of the settlement amount shall be made in the following instalments:
(a) EUR 40,000 within five (5) days of the Parties' signing of this Agreement; and
(b) EUR 40,000 by no later than 15 July 2021 .
(c) EUR 40,000 by no later than 15 September 2021.
(d) EUR 40,000 by no later than 30 October 2021 .
(e) EUR 21,000 (net) by no later than 15 December 2021 .
2.2 AEL undertakes to present evidence attesting the payment of the above-mentioned instalments, within 02 (two) days following each payment, through the e-mail: nir@nirinbar.com"
2. According to Clause 2.4 of the Agreement , If the Club is late with any of the payments set forth then:
a) all remaining payments will be due at once and the Club shall pay ten (10) % default interest p.a on the remaining amount for payment , as from the day when such remaining payment s became due again until the date of effective payment:
and
b) in addition, the Club would be liable to pay the Player an agreed penalty of EUR 25,000.
3. On 1 December 2021, the player sent a default notice to the club, requesting the following:
"7. In bad faith, the ungrateful Club failed to comply with it s obligations. Instead the Club orally informed the Player that it has no foreseeable intent ions to pay him neither the cur rent overdue payment s nor the fifth instalment that is due to 15 December 2021.
8. Consequently, as per Clause 2.4 of the Agreement , the Player is hereby to inform the Club that all the remaining payments under the Agreement are due at once at 10% interest per annum as from 30 October 2021 until effective payment and in addition, a penalty of EUR 25,000 is also due on immediate effect .
Hence as per today, the Club is in debt towards the Player in the total amount of EUR 80,138 at 10% interest p.a as from 30 October 2021 (...).
9. The Player hereby puts the Club in default and grants the Club with a deadline of 15 (fifteen) days as from today (...)
4. On 17 December 2021, Idriz Batha lodged a claim before FIFA for outstanding remuneration and requested the payment of EUR 80,138 plus 10% interest p.a. as from 30 October 2021, as well as CHF 9,750 as legal costs.
5. The Claimant detailed his request as follows:
 - EUR 450 are overdue out of the first 3 payments (Clauses 2.1(a-c) of the Agreement);
 - EUR 40,000 are overdue out of the Fourth Payment (Clause 2.1 (d) of the Agreement) .

- EUR 14,688 (21,000 -6,312) are overdue out of the Fifth instalment (Clause 2.1 (e) and Clause 2.7 of the Agreement) .
 - EUR 25,000 as penalty (Clause 2.4 of the Agreement) .
6. In its reply to the Claim, the Respondent acknowledged a debt of EUR 54,688 "and not EUR 55,138 as the Claimant alleges) and stated that its is "its true intention to pay as soon as possible".
 7. The club explained that it is facing financial difficulties.
 8. As to the claimed penalty, the club considered that it is "abusive, immoral and illegal and thus it needs to be rejected."
 9. The Respondent argued that, in this regard, it must be stressed out that the penalty clause of 25,000 euros requested by the Claimant is de facto a hidden additional interest over the outstanding amount of 54,688 euros (which anyway includes interest as awarded by the CAS decision), at a rate of roughly 45% p.a. and such interest rate is clearly and undoubtedly excessive and disproportionate.
 10. In view of the above, the Respondent rejected the application of the penalty or, subsidiarily, to reduce it to an appropriate level.
 11. The Respondent further rejected the payment of legal fees, based on the jurisprudence of the DRC.
 12. Despite being invited to do so, the Respondent failed to provide his replica.

II Considerations of the DRC

a. Competence and applicable legal framework

1. First of all, the Single Judge of the DRC (hereinafter also referred to as *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 17 December 2021 and submitted for decision on 6 April 2022. Taking into account the wording of art. 34 of the October 2021 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.
2. 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 (August 2021 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 an Albanian player and a Greek club.
3. 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 (August 2021 edition), and considering that the present claim was lodged on 17 December 2021, the August 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

4. 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

5. 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 he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

6. The Single Judge first observed that, following a previous procedure before FIFA (18-01505) and CAS, on 18 May 2021, the parties concluded a settlement agreement with the following conditions:

“ 2.1 AEL shall pay as a settlement amount EUR 181 ,000 (one hundred eighty one thousand euros) to the Player for the full and final settlement of the Claim (capital and interest) and of any and all issues related to the Claim. The payment of the settlement amount shall be made in the following instalments:

(a) EUR 40,000 within five (5) days of the Parties' signing of this Agreement; and

(b) EUR 40,000 by no later than 15 July 2021 .

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(d) EUR 40,000 by no later than 30 October 2021 .

(e) EUR 21,000 (net) by no later than 15 December 2021 .

2.2 AEL undertakes to present evidence attesting the payment of the above-mentioned instalments, within 02 (two) days following each payment, through the e-mail: nir@nirinbar.com”

7. Subsequently, the Single Judge noted that the Claimant lodged a claim before FIFA against the Respondent and requested the payment of EUR 80,138, detailed as follows:
- EUR 450 are overdue out of the first 3 payments (Clauses 2.1(a-c) of the settlement agreement);
 - EUR 40,000 are overdue out of the Fourth Payment (Clause 2.1 (d) of the settlement agreement) .
 - EUR 14,688 (21,000-6,312) are overdue out of the Fifth instalment (Clause 2.1 (e) and Clause 2.7 of the settlement agreement) .
 - EUR 25,000 as penalty (Clause 2.4 of the settlement agreement) .
8. On the other hand, the Single Judge took note of the Respondent's position, according to which, fundamentally, it acknowledged a debt of “EUR 54,688” an not “EUR 55,138”, while noting that is “its true intention to pay as soon as possible”, while underlined that it is facing financial difficulties.
9. In other words, the Single Judge understood that the debt concerning the principal amount is essentially acknowledged by the club, save for a difference of EUR 450.
10. In this regard, the Single Judge observed the documentation provided by the Respondent in support of its allegations as to having performed partial payments, and noted that it was not available in an official FIFA language. In this respect, the Single Judge referred to art. 13 par. 1 of the Procedural Rules, according to which “any submission to a chamber not made in an official FIFA language will be disregarded.”
11. In view of the above, the Single judge, while taking note of the Claimant's request, could only establish that the following amounts remain outstanding:
- EUR 450 out of the first 3 payments (Clauses 2.1 (a-c) of the settlement agreement);
 - EUR 40,000 out of the Fourth Payment (Clause 2.1 (d) of the settlement agreement)

- EUR 14,688 (21,000 minus 6,312) are overdue out of the Fifth instalment (Clause 2.1 (e) and Clause 2.7 of the settlement agreement) .

12. As a result, in strict application of the principle of *pacta sunt servanda*, the Single Judge established that the Respondent shall pay to the Claimant the amount of EUR 55,138, corresponding to the amounts mentioned in the previous paragraph.
13. Moreover, taking into account clause 2.4 par a) of the settlement agreement, the request of the Claimant as well as the longstanding jurisprudence in this regard, the Single Judge decided to award 10% interest p.a. over said amount as from 30 October 2021.
14. Subsequently, the Single Judge noted that the Claimant requested the payment of EUR 25,000 as penalty, as it was established in clause 2.4 b) of the agreement.
15. In relation to said penalty clause, Single Judge took note of the Respondent's position, as the latter argued that it is abusive in nature.
16. However, in relation to said argument, the Single Judge observed that clause 2.4 b) of the agreement, which foresaw the application of a penalty in the amount of EUR 25,000, was agreed after a decision of the DRC and a CAS Award, and thus understood that, given the context and in accordance with the principle of the free will of the parties, it was mutually agreed and accepted.
17. As a result, in strict application of the principle of *pacta sunt servanda*, the Single Judge established that the Respondent shall pay to the Claimant the amount of EUR 25,000, corresponding to agreed penalty.

ii. Compliance with monetary decisions

18. 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 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 amounts of outstanding remuneration and/or compensation in due time.
19. 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.
20. 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.

21. 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.
22. 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.
23. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the club. On account of the above and bearing in mind that this is the first offense by the club within the last two years, the Single Judge decided to impose a warning on the club in accordance with art. 12bis par. 4 lit.a) of the Regulations.

d. Costs

24. 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.
25. 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.
26. Lastly, the Single Judge concluded his deliberations by rejecting any other requests for relief made by any of the parties.

III Decision of the DRC

1. The claim of the Claimant, Idriz Batha, is partially accepted.
2. The Respondent, Club Athlitiki Enosi Larissa FC, has to pay to the Claimant, the following amounts:
 - **EUR 55,138 as outstanding remuneration plus 10% interest** p.a. as from 30 October 2021 until the date of effective payment;
 - **EUR 25,000 as contractual penalty.**
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. A warning (art. 12 bis of the Regulations) is imposed on the Respondent.
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 of the ban shall be of up to 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 art. 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 Garcia 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).

CONTACT INFORMATION

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