

Decision of the Dispute Resolution Chamber

passed on 15 May 2024

regarding an employment-related dispute concerning the player
Sunday Damilare Adetunji

BY:

Frans DE WEGER (The Netherlands), Chairperson

Mario FLORES CHEMOR (Mexico), member

Alexandra GOMEZ BRUINEWOOD (Uruguay/The Netherlands), member

Roy VERMEER (The Netherlands), member

Dana MOHAMED AL-NOAIMI (Qatar), member

CLAIMANT/COUNTER-RESPONDENT:

FK Shkupi-1927 AD, North Macedonia

Represented by Talat Emre Koçak

RESPONDENT/COUNTER-CLAIMANT:

Sunday Damilare Adetunji, Nigeria

Represented by Sila International Lawyers

SECOND RESPONDENT:

Cukaricki Doo, Serbia

Represented by Ksenija Damjanovic

I. Facts of the case

1. On 24 August 2021, the North Macedonian club FK Shkupi-1927 AD (hereinafter, the *Claimant/Counter-Respondent* or *FK Shkupi*) and the Nigerian player Sunday Damilare Adetunji (hereinafter, the *Respondent/Counter-Claimant* or the *Player*) concluded an employment agreement (hereinafter, the *Contract*) valid as from 24 August 2021 until 14 June 2023.

2. According to Clause 4 of the Contract, "(...) upon request of the club, this contract will be extended for 1 (one) additional year until 14.06.2024".

3. In accordance with Clause 13 of the Contract, FK Shkupi and the Player (hereinafter, jointly referred to as the *Parties*) agreed upon the following:

"The monthly net salary of the football player is 30,700 MKD. The salary is paid once a month, no later than the fifteenth of the current month for the previous month (...)".

4. On 18 August 2021, the Parties concluded an "*Annex of professional football player employment contract*".

5. According to Clause 2 of this Annex, the Parties agreed upon the following:

"In addition to the player's basic salary determined in the Contract, the Player is entitled on the following payments respectfully: Additional monthly income amounted in EUR 2000 (two thousand) for the season 2021/2022; 2022/2023".

6. On 14 February 2022, the Parties concluded a further "*Annex to the contract for professional football occupation*", in accordance with which:

"The Club and the Footballer, in a mutual agreement with a freely expressed will, agree that the duration of the previously mentioned Contract in Article 1 of this Annex be extended for an additional 1 (one) year, with which it lasts until the beginning of the summer transfer period 2024, i.e., until June 14, 2024.

The other provisions and articles of the Contract, as well as the agreed rights and obligations for the Club and the Footballer under it, remain unchanged".

7. On 12 June 2023, the Player went to the doctor for an electrocardiogram.

8. During the months of May, June and July 2023, several communications were exchanged between the Player and the General Manager of FK Shkupi, Mr. Emir Shabani, (hereinafter, *Mr. Shabani*) and the Player and an executive member of FK Shkupi via WhatsApp, where the Player informed FK Shkupi that he was not well, he did not want to resume his duties with the club and he did not want to travel to Türkiye with the team for the pre-season.

9. On 12 June 2023, the Player went to the Embassy of the Republic of Türkiye in Skopje for his visa application, and he allegedly told to an employee of the Embassy, Mr. Cengiz Kurt, that *"I don't want to go to the Turkiye camp, please don't give me visa"*.
10. On an unknown date, the Player sent a message via Instagram to an unknown Instagram account stating that he did not want to be a member of the team anymore, that he did not want to travel for the pre-season training and asking to encourage the President of FK Shkupi to let him go. The Player also texted that he would rather die than play for FK Shkupi again, that he was done there, and he was not going to play.
11. On 13 June 2023, the Player received reply from the above unknown Instagram account refusing his requests.
12. On 15 June 2023, FK Shkupi sent an email to the Player attaching flight tickets from Skopje to Istanbul for the preparatory camp which would take place in Bolu (Türkiye) from 16 to 30 June 2023. The flight from Skopje to Istanbul was scheduled for 16 June 2023 at 8:40.
13. On 16 June 2023, the Player went to the doctor together with Mr. Shabani. The appointment was scheduled at 15:00 and was booked by the Club.
14. The medical report stated the following:

"Therapy. To continue the treatment with the Effervescent Tablet Aspirin C a 400/200 mg 3x1... 21 day. T. Noplaza a 40 mg 1x1 – in the morning, on an empty stomach... 21 day. Planned control examination after the end of the therapy! Easy warm-up exercises, gradual conditioning, isometric and isotonic exercises with higher intensity after 4-6 weeks! Consultation in case of possible recurrence of chest discomfort".

15. On 17 June 2023, FK Shkupi sent an email to the Player where it requested explanations regarding his absence in the training, otherwise it would impose disciplinary measures on the Player.
16. On the same date, the Player replied via email to FK Shkupi stating the following:

"It is disheartening how the club management has treated me despite my loyalty and passion for the club. I have communicated my intention and, unfortunately, the club management considers what benefits them the most without considering my human and career progress. I am disappointed I got this query because on Wednesday (June 15, 2023), I met with the Club's Sporting Director, Mr. Emir Shabani and we discussed my situation in which he promised to engage the management and get back to me. I am a professional and my job is paramount to me, I have also said, I can't join the training until my issues are sorted with the club and my health is good. My mental health is stressed and I am down psychologically. The medical test I had a few days ago showed that I am having a rush in my heart because I think so deeply about my situation. The doctor advised that I needed to rest. I have served this club graciously and I am dedicated to the club project, but this club can lay a legacy between us by supporting

my dreams and personal wishes. Sadly, I have to pass through this unpleasant route before my wishes would be respected. I need to take care of my health and I need this time out. I am appealing to the club management to review my request and allow me to make a progressive career decision. Until we clear all personal issues, kindly respect my health decision".

17. Also on 17 June 2023, the Turkish club MKE Ankaragücü sent an offer to FK Shkupi showing its interest in the definitive transfer of the Player for the amount of EUR 750,000.

18. On 18 June 2023, FK Shkupi rejected the offer.

19. On 18 June 2023, FK Shkupi sent an email to the Player informing him that:

"The management of the FC Shkupi will decide on the disciplinary sanctions to be implemented on you and herein reserves the rights in this regard. This is our 3rd and final warning to you. You must be in the club's camp within 24 hours, if you do not attend the club's camp within this period, if you leave our club alone during the preparations for the European cup, which is very important for our club, the club will apply all kinds of appropriate fines and disciplinary measures that it is entitled to and will resort to all kinds of compensation".

20. On 20 June 2023, FK Shkupi sent to the Player a disciplinary decision issued by the club on 19 June 2023, in which the following sanctions were imposed on the Player:

- A fine of EUR 2,500;
- Suspension for any activity in the club until the Player appear at the team's training;
- A fine of EUR 500 for each additional missed training; and
- Further sanctions in case this matter affected the atmosphere and results of the team.

21. On 21 June 2023, the Player inquired to Mr. Shabani about his availability so he could go pick his passport to *"find my way back to the US"*.

22. On 23 June 2023, FK Shkupi sent an email to the Player attaching a training programme prepared by the head coach of the team.

23. On 27 June 2023, FK Shkupi received an offer from TSC Backa Topola for the loan transfer of the Player in exchange of EUR 300,000.

24. On 27 June 2023, the Player once more visited a doctor in Skopje. The medical report stated:

"Corrected therapy, to continue with the same until follow up (in 2 weeks), to make a new ccs with inflammatory markers".

25. On 28 June 2023, Mr. Shabani shared with the Player an *"authorisation"* in favour of the football agent Mr. Constantin Pilici to negotiate his transfer to the Latvian club Riga FC. The Player refused to sign it.

26. Also on 28 June 2023, FK Shkupi sent a "final word letter" to the Player informing that:

"Upon the clear wording of the mentioned article of the Regulations of FIFA, the Player, Sunday Damilare Adetunji and his new club mutually, be responsible for sporting sanctions and compensation. So, the contracted club, lastly gives 5 (five) days to him, as a final warning, to return otherwise, the Club, FC Shkupi will have no other option but to terminate the employment contract, with just cause and with immediate effect and apply it to the Macedonian Football Association and lodge it claims at FIFA Football Tribunal".

27. On 2 July 2023, FK Shkupi sent a new default letter to the Player starting, *inter alia*, the following:

"It has come to our knowledge that Sunday Damilare Adetunji does not want to play at FC Shkupi, due to an unknown reason of racism in Northern Macedonia. In his replies to the Club, he has never mentioned about racism in Macedonia (...).

It is noteworthy to mention that the Player signed an employment contract one year before he must attend the camp in Türkiye. He started playing at the Club in 2021. The Club sent him the flight tickets to Türkiye and also informed him about the training plans of the Club. It is also important to note that the Club sent him a warning letter in accordance with the Tarik El Tayyip decision of the CAS and in case the Player does not attend the camp, the Club is going to terminate the employment contract and apply to FIFA for a formal decision.

(...) It is important to highlight that the Player gave this interview following receiving our warning letter regarding his absentecism. The Club, FC Shkupi, has many players having the colour black and there is no racism in the country. The Club has never received any complaint about racism. The Player also did not provide any evidence about racism and did not send any letter concerning his will of not returning to the Club, it is a necessity to send a letter to the Club before terminating the employment contract according to FIFA decisions.

In case the Player does not return to the Club pursuant to warning letter of the Club, FC Shkupi, the Club will terminate the employment contract and apply to FIFA's decision-making bodies for a formal decision".

28. On 4 July 2023, FK Shkupi sent a new letter to the Player by way of which it terminated the Contract stating, *inter alia*, the following:

"The Player, Sunday Damilare Sunday, did not appear to the pre-season camp of the Club despite the warning letter of FC Shkupi and also the tickets sent to the Player.

The Player is insistently willing to make a transfer move to a third club and using some FIFA rules about racism and he wanted to make the employment contract terminated. It shall be highlighted that the employment contract was signed in 2021 and there is no racism problem in Macedonia.

(...) Upon the clear wording of the mentioned article of the Regulations of FIFA, the Club, FC Shkupi hereby terminates the employment contract with just cause and with immediate effect, the Player, Sunday Damilare Adetunji and his new club mutually, be responsible for sporting sanctions and compensation. For this reason, FC Shkupi is going to lodge a claim at FIFA in this regard".

29. On 6 July 2023, the Player requested to Mr. Shabani his passport, which apparently had been held by him, and also referred to the allegedly unlawful termination of the Contract by FK Shkupi.

30. On 8 July 2023, the Player sent a letter to FK Shkupi stating, *inter alia*, that:

"We must express strong disagreement with the termination of the Contract. All allegations of the Club against the Player regarding alleged breach of the Contract are rejected hereby. The club was acknowledged about the Player's mental health problems. Moreover, the Player faced with abusive and even discriminatory behaviour by the Club. We are currently collecting evidence of such behaviour against the Player to bring it to FIFA".

31. On 11 August 2023, FK Shkupi paid to the Player MKD 30,775. On the same date, the Player requested FK Shkupi clarification of such payment.

32. On 18 August 2023, FK Shkupi replied that the above-mentioned payment corresponded to the Player's monthly salary for June 2023 after withholding a fine imposed on the Player *"for not appearing in the training sessions"*.

33. On 22 August 2023, the agent Mr. Srdjan Jeremic, offered the services of the Player to Mr. Vladimir Matijasevic, sports director of the Serbian club FC Cukaricki Doo (hereinafter, the *Second Respondent* or *Cukaricki*), informing that the Player was a free agent after FK Shkupi had terminated the Contract.

34. On 30 August 2023, the Player and Cukaricki concluded an employment agreement (hereinafter, the *New Contract*), valid as from 1 September 2023 until 30 June 2026.

35. According to Clause 3 of the New Contract, the Player and Cukaricki agreed upon the following salary:

1. Season 2023-24, contracted salary from 01.09.2023 until 30.06.2024: EUR 4,400 net.

2. Season 2024-25, contracted salary from 01.07.2024 until 30.06.2025: EUR 6,400 net.

3. Season 2025-26, contracted salary from 01.07.2025 until 30.06.2026: EUR 8,400 net.

The Club shall pay agreed salary to the Player's current account, in dinnars, by the middle exchange rate of NBS on the day of payment, and it shall not be modified unless by an annex to this Contract. Payment of the salary shall be made no later than 5. in the current month for the previous.

36. On 3 September 2023, FK Shkupi sent a letter to Cukaricki where it informed the latter about the unilateral termination of the Contract and its alleged just cause.

37. On 4 September 2023, Cukaricki replied to the above letter informing FK Shkupi that the Player was offered to it *“significantly after a unilateral termination of the professional player contract by your club with the Player”*, and that *“all issues must receive an epilogue in relation between FC Shkupi – the Player”*.
38. On 5 September 2023, FK Shkupi sent a new letter to Cukaricki informing, *inter alia*, that:
- “In the event that the Player signs an employment contract with FK Cukaricki and the Player participates in the trainings your esteemed club will be part of this matter and a part of this dispute and also it shall be stated that a case at FIFA will be opened”*.
39. Also on 5 September 2023, the International Transfer Certificate (ITC) for the Player’s transfer from FK Shkupi to Cukaricki was delivered under the transfer instruction *“engage out of contract free of payment”*.

II. Proceedings before FIFA

40. On 3 October 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Claim of FK Shkupi

41. According to the Claimant, the Player refused to attend to the pre-season preparation. In this regard, it alleged that *“acting against the clear wording of the Contract and the employment rules, [the Player] was waiting the Claimant to put an end to the Contract as it was written in the warning letter to sign a new employment contract with Cukaricki”*.
42. FK Shkupi also alleged that, according to the FIFA Regulations, the termination of the Contract took place within the protected period and, consequently, both the Player and Cukaricki should be held liable for sporting sanctions.
43. The requests for relief of the Claimant, as amended, were the following:
- *The Claimant would like to request you to make a decision that the First-Respondent must pay a total amount of 750.000,00 EUR with its interest starting from the termination date.*
 - *The Claimant also asks FIFA to decide that the Second-Respondent is jointly and severally liable for the payment of this amount.*
 - *The Claimant asks FIFA to impose sanction to the First-Respondent and restrict the First-Respondent up to 6 (six) months.*
 - *The Claimant requests from FIFA to render a decision states that the Second-Respondent is banned from registering any new players, either nationally or internationally for entire and*

consecutive registration periods.

- *In consideration of the fact that the Respondent caused the Claimant to file the case herein, we would like to request your honorable tribunal to make a decision that the attorney-ship fees (as %10 of the total decision) that the Claimant is faced and shall be paid to his legal counsel due to his case.*

b. Reply and counterclaim of the Player

44. According to the Player, at the end of May 2023 he suffered from viral upper respiratory infection, and on 12 June 2023 he visited a doctor in Skopje with Mr. Shabani and the FK Shkupi accountant. In this respect, the Player asserted that they did not provide him with any copy of the medical documents, and that he was only able to take a picture of the first page of the electrocardiogram.
45. The Player argued that until June 2023, FK Shkupi had no claims against him, and that he duly performed his contractual obligations.
46. The Player also alleged that he was not aware until this proceeding that Ankaragücü had made an offer to Shkupi regarding his transfer.
47. The Player further alleged that FK Shkupi did not object to the issuance of the ITC for the Player's transfer from FK Shkupi to Cukaricki.
48. The Player argued that the premature termination of the Contract at the club's initiative was neither based on the Player's severe breach nor was an *ultima ratio* measure.
49. According to the Player *"the vagueness of the request, pending suspension from the Club's activities, the date of return to Skopje, clearly show that the Notice was a mere formality for the Club which had already decided to unilaterally terminate the Contract. Furthermore, the Club gave the Player an extremely short deadline of 5 days as per the Notice in order to formally state that it warned the Player"*.
50. The Player considered that *"the Club's Notice was merely formal and was not aimed at providing the Player with a realistic chance to cure any possible breach"* given that *"(i) 5 days is an aggressively short period, and (ii) the wording of the Club's request and pending disciplinary sanctions against him objectively prevented the Player to remedy any possible breach (if it existed as the Club wrongly suggests)"*.
51. The Player did not dispute that he was absent from the training sessions from 16 June 2023 until 4 July 2023 (i.e., date of termination of the Contract). However, the Player considered that this absence (i) was not lengthy and not harmful for the interests of the Club and (ii) was justified by medical reasons known to the Club.
52. The Player further alleged that in case the Chamber considers the absence enough basis to unilaterally terminate the Contract, that *"his absence from the training sessions was justified by the health issues which were known to the Club but for some reason completely ignored. In this regard, such*

motivated absence of the Player could not and did not constitute a just cause for the Claimant to terminate the Contract".

53. The Player denied FK Shkupi's allegations regarding his alleged conversations with any club, his alleged intention to make a move to a new club, and/or the alleged offer by FK Shkupi to mutually terminate the Contract.
54. The Player further asserted that on 11 August 2023 FK Shkupi partially paid him his salary for June 2023, and that the amount of EUR 2,000 remains outstanding.
55. The Player recognized that he started training with Cukaricki on 1 September 2023.
56. According to the Player, *"[i]t is crystal clear that the Player did not force the Club to terminate the Contract, and his behaviour was not abusive towards the Club. To put it simple, the Player (i) simply followed the doctor's recommendations while being sick, (ii) informed the Club about it in writing and, at the same time, (iii) did not negotiate with any other club in June or July 2023"*.
57. The Player argued it was FK Shkupi who breached the Contract for not paying the Player's salary on time and for imposing unlawful disciplinary measures on the Player, since allegedly the Player's right to be heard was not respected, the amount of the fine was disproportional (one monthly salary plus additional optional fines), and the Club neither familiarized the Player with its disciplinary regulations nor even enclosed them to its claim.
58. As to the consequences arising from the alleged termination without just cause by FK Shkupi, the Player argued that he is entitled to receive EUR 2,500 (representing the amount that FK Shkupi set off from the fine imposed on him) and EUR 322.58, which represents his salary for the period between 1 to 4 July 2023.
59. As to the compensation payable by FC Shkupi, the Player acknowledged that he has fully mitigated his damages for the period from 1 September 2023 until 14 June 2024.
60. The Player, however, considered he is entitled to receive compensation for the period in which he remained unemployed (from 4 July 2023 until 1 September 2023), and asserted that he is entitled to receive EUR 4,677.42 plus interest as from 5 July 2023 (i.e., EUR 2,500 + EUR 2,500 x 27 / 31).
61. Regarding the amount of EUR 750,000 claimed by FK Shkupi as compensation, the Player considered it *"ungrounded"*, and only based on an offer that was rejected by FK Shkupi.
62. The Player also argued that in case the Chamber finds that FK Shkupi terminated the Contract with just cause, no compensation should be payable to it given that *"it (i) "engineered a breach", (ii) indeed lost interest in the Player's services and (iii) actually does not have any lost profit after terminating the Contract at its own initiative"*.

63. Alternatively, the Player considered that the compensation should be of EUR 34,998.50 considering his average earnings from 5 July 2023 until 14 June 2024.
64. Finally, the Player alleged that no sporting sanctions should be imposed on him.
65. The requests for relief of the Player, as amended, were the following:

Based on the foregoing, the Player hereby respectfully asks the FIFA DRC to rule as follows:

1. *The Claim of the Claimant / Counter-Respondent, FK Shkupi-1927 AD, Northern Macedonia, is rejected.*
2. *The Counterclaim of the First Respondent / Counter-Claimant, Sunday Damilare Adetunji, Nigeria, is accepted.*
3. *The Claimant / Counter-Respondent has to pay to the first Respondent / Counter-Claimant the following outstanding amounts:*
 - *EUR 2,000 net as outstanding remuneration for June 2023 plus 5% interest p.a. as from 5 July 2023 until the date of effective payment.*
 - *EUR 322.58 net as outstanding remuneration for July 2023 plus 5% interest p.a. from 5 July until the date of effective payment.*
4. *The Claimant / Counter-Respondent has to pay the Respondent / Counter-Claimant the amount of EUR 4,677.42 net as compensation for breach of contract plus 5% interest p.a. as from 5 July 2023 until the date of effective payment.*

In the alternative, if the FIFA DRC finds that both the Club and the Player mutually departed from the Contract

1. *The Claim of the Claimant / Counter-Respondent, FK Shkupi-1927 AD, Northern Macedonia, is rejected.*
2. *The Counterclaim of the First Respondent / Counter-Claimant, Sunday Damilare Adetunji, Nigeria, is partially accepted.*
3. *The Claimant / Counter-Respondent has to pay to the first Respondent / Counter-Claimant the following outstanding amounts:*
 - *EUR 2,000 net as outstanding remuneration for June 2023 plus 5% interest p.a. as from 5 July 2023 until the date of effective payment.*
 - *EUR 322.58 net as outstanding remuneration for July 2023 plus 5% interest p.a. from 5 July until the date of effective payment.*

As the second alternative, if the FIFA DRC finds that the Club terminated the Contract with just cause and the Club is entitled to receive monetary compensation.

1. *The Claim of the Claimant / Counter-Respondent, FK Shkupi-1927 AD, Northern Macedonia, is partially accepted.*
2. *The First Respondent / Counter-Claimant, Sunday Damilare Adetunji, Nigeria, has to pay to the Claimant / Counter-Respondent the amount of EUR 34,998.50 net as compensation for breach of contract.*
3. *The Counterclaim of the Respondent / Counter-Claimant is partially accepted.*
4. *The Claimant / Counter-Respondent has to pay the First Respondent / Counter-Claimant the following outstanding amounts:*
 - *EUR 2,000 net as outstanding remuneration for June 2023 plus 5% interest p.a. as from 5 July 2023 until the date of effective payment.*
 - *EUR 322.58 net as outstanding remuneration for July 2023 plus 5% interest p.a. from 5 July until the date of effective payment.*

c. Position of Cukaricki

66. Cukaricki initially argued that it was not involved at all in the circumstances prior and/or regarding the termination of the Contract between FK Shkupi and the Player.
67. Cukaricki alleged that from the WhatsApp messages between the General Manager of FK Shkupi, Mr. Emir Shabani, and the Player, it is notable that while on the one hand FK Shkupi provided the Player with flight tickets to Türkiye on 16 June 2023, at the same time it made an appointment with a doctor on behalf of the Player for the same date as the flight. Additionally, also on 16 June 2023, FK Shkupi sent the Player the first default notice requesting him explanations as to the reason for his alleged absence to the training and not travelling to Türkiye.
68. On account of the above, Cukaricki asserted that FK Shkupi terminated the Contract without just cause, given that it was well aware of the medical problems of the Player and it did retain the Player's passport.
69. For Cuckaricki, if there is any unjustified absence, it was only from 23 June 2023 (when the Player was provided with his passport by FK Shkupi) until 28 June (when FK Shkupi sent the second default notice to the Player), i.e., less than a week and without any official matches. For Cukaricki, this absence cannot be considered as a serious problem to FK Shkupi.
70. Cukaricki further alleged that after being put in default by FK Shkupi, the Player went to FK Shkupi offices on 29 June 2023 and on 3 July 2023 as demonstrated by the WhatsApp messages, "*meaning that his misbehaviour (if there was any at all) did not persist after being warned by the Claimant*".

71. Cukaricki also argued that FK Shkupi did not dispute the Player's transfer in the Transfer Matching System (TMS), what allegedly is another example of its contradicting actions.
72. As to the calculation of compensation provided by FK Shkupi (i.e., EUR 750,000 allegedly from the offer of the Turkish club MKE Ankaragücü), Cukaricki asserted both the offer and FK Shkupi refusal could have been fabricated by FK Shkupi for the purpose of this proceeding and, thus, should be rejected.
73. Notwithstanding the foregoing, Cukaricki also alleged that there is no legal nor factual basis to award FK Shkupi the above-mentioned amount given that the conditions for application of claimed loss of transfer fee have not been met at all (i.e., it was FK Shkupi itself who (i) rejected the alleged offer from Ankaragücü and (ii) terminated the Contract with the Player).
74. In case the DRC considers that (i) FK Shkupi terminated the Contract with just cause and (ii) it is entitled to compensation, Cukaricki argued that the amount should be calculated under art. 17 of the Regulations, in which case the total amount due would be MKD 173,537.53 and EUR 20,826.66.
75. According to Cukaricki, it should not be held jointly and severally liable for payment of compensation given that it was FK Shkupi who terminated the Contract, and that Cukaricki and the Player were not in touch at all before FK Shkupi terminated the Contract.
76. Cukaricki asserted it was not until Mr. Srdjan Jeremic offered them the Player on 22 August 2023 that they started to be interested in him, what allegedly demonstrates there is no fault or inducement of Cukaricki in the termination of the Contract with FK Shkupi, nor there was any causation between the termination of the Contract and the conclusion of the New Contract. In this regard, Cukaricki referred to the "Mutu Saga" to justify the exception to the rule of joint and several liability of the new club.
77. Under the above rationale and based on the facts of the case, Cukaricki also considered it should not be liable for sporting sanctions.
78. The requests for relief of Cukaricki, as amended, were the following:
 1. *To dismiss the claim of the Claimant and to decide that the contract between the Claimant and the Respondent 1 was terminated by the Claimant without just cause.*

In case the Dispute Resolution Chamber accepts the claim of the Claimant, the Respondent 2 respectfully asks it:
 2. *To order that no compensation is due to the Claimant or, alternatively, to order that amounts of 173.537,53 MKD and 20.826,66 EUR are compensation due to the Claimant;*
 3. *To order that the Respondent 2 is not jointly and severally liable for payment of compensation due to the Claimant;*

4. To order that no sporting sanctions are imposed on the Respondent 2

d. Reply of FK Shkupi to the counterclaim of the Player

79. In its reply to the counterclaim lodged by the Player, FK Shkupi initially insisted that there is no racism in the club nor in North Macedonia, and that the Player had never brought this issue before, and reiterated the arguments provided in its claim.
80. FK Shkupi further alleged that the illness of the Player did not prevent him from travelling and taking part in trainings.
81. FK Shkupi argued that the Player did nothing after the default notices, and that five days was enough time for him to comply with his obligations.
82. FK Shkupi also asserted that the Player never lodged a claim against it for the alleged termination without just cause. Instead, it was only when FK Shkupi lodged the present claim that he decided to submit a counterclaim.

e. Final comments of the Player

83. The Player essentially considered that the following elements had been demonstrated:
- *FK Shkupi has not refuted the Player's position that his (justified) absence at the pre-season camp in any case was not sever enough to constitute a just cause for the Club to unilaterally terminate the employment contract on 4 July 2023;*
 - *By enclosing the medical documents to the Replica, the Club itself confirms awareness of the Player's health issues, in particular, his diagnosis (acute pericarditis) in June 2023;*
 - *Most part of the Club's Replica is related to the issue of racism which is not relevant for the matter at hand given that the Player did not refer to this issue in his Counterclaim and did not mention it as a justification for not attending the training camp in Türkiye;*
 - *Not initially providing the medical documents and the decision on disciplinary sanctions with is Claim and then enclosing them to the Replica (after the Player had already disclosed them to FIFA) one more shows the Club's bad faith.*
84. According to the Player, he did not waive his right to claim outstanding amounts nor compensation for breach of contract. FIFA Regulations provide for a 2-year limitation period, and he did so in the present proceedings by means of lodging a counterclaim for purposes of procedural economy.
85. The Player further disputed the authenticity of the offers received by FK Shkupi to transfer the Player.

f. Final comments of Cukaricki

86. In its final comments, Cukaricki insisted on the arguments submitted with the response to the claim.
87. Cukaricki also alleged that FK Shkupi, by issuing the Player the special program to perform in Skopje between 24 and 30 June 2023, expressly accepted the Player's absence from the training camp in Türkiye.
88. Cukaricki also disputed the authenticity of the alleged offers received by FK Shkupi to transfer the Player.

III. Considerations of the Dispute Resolution Chamber**a. Competence and applicable legal framework**

89. First of all, the Dispute Resolution Chamber (hereinafter, the *Chamber* or the *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 3 October 2023 and submitted for decision on 15 May 2024. Taking into account the wording of art. 34 of the March 2023 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.
90. Subsequently, the Chamber referred to art. 2 par. 1 and art. 24 par. 1 lit. a) of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par. 1 lit. b) of the Regulations on the Status and Transfer of Players (February 2024), it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a North Macedonian club and a Nigerian player, with the intervention of a Serbian club.
91. 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 (February 2024 edition), and considering that the present claim was lodged on 3 October 2023, the May 2023 edition of said regulations (hereinafter the *Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

92. The Chamber 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 Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the (TMS).

c. Merits of the dispute

93. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber 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.

i. Main legal discussion and considerations

94. The above having been established, the Chamber initially noted that the following events had been duly demonstrated:

- The Player had several appointments with a doctor as he was not feeling well. FK Shkupi was not only aware of this, but it also organized such appointments, and even Mr. Shabani (FK Shkupi General Manager) accompanied the Player, in any event when the appointment took place on 16 June 2023.
- 16 June 2023 was also the date when the Player was requested by FK Shkupi to travel to Türkiye by plane, and where FK Shkupi sent the first default notice.
- From the WhatsApp conversation provided, it is visible that the medical appointment was scheduled for the afternoon (at 15:00), while the flight to Türkiye departed in the morning (at 8:40), again, both on 16 June 2023.
- The absence of the Player took place between 16 June 2023 (first default notice) and 4 July 2023 (date of termination), i.e., 19 days.
- The doctor recommended the Player to not undergo high intensity exercises for a period between four and six weeks. FK Shkupi was aware of this fact because its General Manager accompanied the Player to the doctor.
- On 19 June 2023, FK Shkupi imposed a fine on the Player.
- On 28 June 2023, Mr. Shabani shared with the Player an "*authorisation*" in favour of the football agent Mr. Constantin Pilici to negotiate his transfer to the Latvian club Riga FC.
- The Player had communicated FK Shkupi on several occasions that he did not want to continue under the club's discipline, and that he had no intention to travel to Türkiye.
- On 4 July 2023, FK Shkupi terminated the Contract based on the Player's absences to the pre-season in Türkiye.

95. In view of the above-mentioned facts, the Chamber noted that, on the one hand, FK Shkupi claimed that the Player did not return to his duties with the club despite the several notices sent to him. At the same time, however, the Chamber noted that FK Shkupi itself provided the Player with flight tickets to Türkiye on the same day where he had to go to the doctor, accompanied by Mr. Shabani.
96. Consequently, the Chamber considered that FK Shkupi did not act with the utmost good faith when it requested the Player to travel to Türkiye, while being fully aware that that was impossible for the Player to do given his doctor's appointment. At the same time, the Chamber deemed that the Player managed to prove that he was indeed ill and that he had to rest. FK Shkupi seems to have completely disregarded this fact, thereby, in the Chamber's view, falling below the expected standard of care that an employer has to show towards a demonstrably ill employee.
97. In that regard, the Chamber was far from being convinced by the medical report dated 27 June 2023 presented by FK Shkupi in its reply only, whereby it is recorded that the Player went to the "University Clinic for Surgical Diseases St Naum Ohridski-Sopje" where no pathological conditions were found. Indeed, besides the Player explicitly denying attending such clinic, the Chamber failed to understand why FK Shkupi did not present that document together with its claim, considering that it was fundamental to its case. Conversely, the Chamber was convinced that on that same date the Player attended instead the PHI University Clinic for Cardiology where he was diagnosed with a "*thickened pericardium*" that demanded him to rest. To reiterate, the Chamber considered that the club's total lack of care towards the Player in the face of a diagnosed heart condition constitutes a material breach of the Contract.
98. On the other hand, the Chamber also took note of the fact that it was undisputed that the Player communicated to FK Shkupi on several occasions that he was not going to travel to Türkiye (and indeed refused to travel to Türkiye) and that he no longer wished to be under the club's discipline. In other words, the DRC also attached much value to the Player's behaviour.
99. On account of the foregoing, the Chamber concluded that both Parties were to be blamed for the termination of the contractual relationship in equal measure.
100. Consequently, and considering the specific circumstances *in casu*, the Chamber determined that no compensation for breach of contract shall be awarded to any of the Parties.
101. Notwithstanding the foregoing, the Chamber observed that the Player also claimed being entitled to outstanding remuneration. In this regard, the Chamber recalled that the Player alleged being entitled to the following amounts:
- EUR 322.58 corresponding to the *pro rata* salary for the month of July 2023; and
 - EUR 2,000 corresponding to the amount that FK Shkupi withheld with the imposition of the fine on 19 June 2023.

102. In this context, the Chamber acknowledged that its task was to determine, based on the evidence presented by the Parties, whether the claimed amounts had in fact remained unpaid by FK Shkupi and, if so, whether the latter had a valid justification for not having complied with its financial obligations.
103. As to the amount requested for July 2023, the Chamber noted that FK Shkupi did not contest nor provide proof of payment of the mentioned amount, which shall therefore be granted.
104. As to the withheld amount for the month of June 2023, the Chamber recalled that on 20 June 2023, FK Shkupi imposed a fine on the Player by way of which if withheld his salary in the amount of EUR 2,500, based on the alleged absences of the Player.
105. In that regard, the Chamber noted first that, as was already explained, the absences of the Player were, at least, partially accepted by FK Shkupi, particularly given that its own General Manager booked - and accompanied the Player to - his medical appointment, in any event on 16 June 2023 whereby the Player was basically ordered to rest. In addition, the Chamber determined that the Player was never provided with a copy of the internal regulations of SK Shkupi, which the club was obliged to do pursuant to art. 21 of the Contract.
106. On account of the above, the Chamber decided that, under the circumstances, the fine was not validly imposed and thus is to be disregarded.
107. On account of the foregoing, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that FK Shkupi is liable to pay to the Player the amounts claimed as outstanding remuneration under the Contract (i.e., EUR 322.58 and EUR 2,000).
108. In addition, taking into consideration the Claimant's request for relief as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding remuneration as from 5 July 2023 (i.e., date of termination) until the date of effective payment.

ii. Compliance with monetary decisions

109. Finally, taking into account the applicable Regulations, the Chamber 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.
110. In this regard, the Chamber 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.

111. Therefore, bearing in mind the above, the Chamber decided that FK Shkupi must pay the full amount due (including all applicable interest) to the Player within 45 days of notification of the decision, failing which, at the request of the creditor, 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 club in accordance with art. 24 par. 2,4 and 7 of the Regulations.

112. FK Shkupi shall make full payment (including all applicable interest) to the bank account provided by the Player in the Bank Account Registration Form, which is attached to the present decision.

113. The Chamber 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

114. 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.

115. Furthermore, 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.

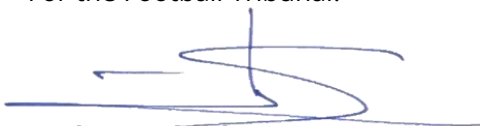
116. Lastly, the Chamber concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant/Counter-Respondent, FK Shkupi-1927 AD, is rejected.
2. The counterclaim of the Respondent/Counter-Claimant, Sunday Damilare Adetunji, is partially accepted.
3. The Claimant/Counter-Respondent must pay to the Respondent/Counter-Claimant the following amount(s):

EUR 2,322.58 as outstanding remuneration plus 5% interest *p.a.* as from 5 July 2023 until the date of effective payment.
4. Any further claims of the Respondent/Counter-Claimant are rejected.
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 Claimant/Counter-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 the full payment (including all applicable interest) is still not made by the end of three entire and consecutive registration periods.
7. The consequences **shall only be enforced at the request of the Respondent/Counter-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 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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