

# Decision of the Dispute Resolution Chamber

passed on 7 March 2023

regarding an employment-related dispute concerning  
the player **BESARD SABOVIC**

**BY:**

**Clifford J. Hendel (USA & France), Deputy Chairperson**  
**Angela Collins (Australia), member**  
**Mario Flores Chemor (Mexico), member**

**CLAIMANT / COUNTER-RESPONDENT:**

**Besard Sabovic, Sweden**  
Represented by SILA Lawyers

**RESPONDENT / COUNTER-CLAIMANT:**

**FC Khimki, Russia**  
Represented by Evgeny Krechetov

**INTERVENING PARTY:**

**Djurgårdens IF, Sweden**

## I. Facts of the case

1. On 20 June 2021, the Swedish player, Besard Sabovic (hereinafter: *player*) and the Russian club, FC Khimki (hereinafter: *club*) concluded an employment contract (hereinafter: *contract*) valid as from 20 June 2021 until 31 May 2024.
2. Art. 3.1 of the contract establishes: “[...] *The salary is paid twice a month: for the first half of the month (advance payment it is paid on the 25th day of the settlement month and the final payment for the month worked is paid on the 10th day of the month following the settlement month. If the day of payment coincides with a weekend or a non-working holiday, the salary is paid on the previous day*”.
3. Art. 6 of the contract reads as follows:

6.1. The Football player's **annual earnings** is set in the amount of **317 647** (Three hundred seventeen thousand six hundred forty seven) Euro for the performance of his work duties under the present contract. It is the aggregate amount of earnings for every 365 (or 366) calendar days.

6.2. The Football player's monthly earnings are calculated on the basis of the annual earnings and include the following:

- a) **monthly salary** (paragraph 6.3 of present contract);
- b) **monthly bonus** for the proper performance of his duties by the Football player (paragraph 6.4 of present contract);
- c) Payments calculated in accordance with current Russian labour legislation on the basis of average earnings: for the period of leave, business trips and in other cases, when the employee retains his average earnings (hereinafter referred to as the **average earnings payments**).

6.3. The Football player's monthly salary is **300 000** (Three hundred thousand) rubles. The salary is paid twice a month - up to the 25<sup>th</sup> day of the current month for the first half of that month, and up to the 10<sup>th</sup> day of the following month for the second half of that month. The monthly salary for a partially worked month is calculated in proportion to the days actually worked.

6.4. The monthly bonus for the full calculated

month is calculated as the difference between (i) the 1/12 part of the annual earnings, (ii) the monthly salary and (iii) the average earnings payments for the calculated month. For the first and last calculated months, the 1/12 part of the annual earnings (i) is calculated in proportion to the time actually worked. In the event that the amount of the monthly salary and the average earnings payments for the calculated month is greater than the 1/12 part of the annual earnings, then such excess will be accounted for when calculating the amount of the monthly bonus in the next calculation periods (months).

4. According to art. 6.9 of the contract, the club undertook to pay the player a “*signing bonus*” in the amount of EUR 117,647 until 31 August 2021.

5. Art. 6.11 of the contract establishes: *"All amounts, which are shown in the present Contract in Euro, will be paid to the Employee in rubles according to the currency rate defined by the Central Bank of the Russian Federation on the last day of the corresponding calculated month, but not more than 97,51 rubles for 1 Euro, and to the account in a bank in Russian Federation. Further operations with money received (including converting, a transfer to the foreign bank etc.) will be made by the Employee on his own and at his own expense. No payments by the Employer in favour of the Employee to the accounts in foreign banks are allowed by the laws of the Russian Federation."*
6. Art. 10.5 of the contract reads as follows: *"Any amounts payable to the Football player under this Contract are stated prior to the withholding of personal income tax."*
7. On 18 February 2022, the club initiated the regulations on bonus payments for the ongoing season.
8. Art. 2.4 of those regulations establish that the general condition for payment of bonuses is that the Club keeps its *"right to participate in the Russian football championship between the teams of the clubs of the Premier League for the season 2022/2023 on sporting basis"*.
9. Art. 3.1. of the regulations state that the maximum bonus for a victory is RUB 575,000 and for a draw RUB 287,000.
10. Art. 3.2. of the regulations define:

Category of employees	Coefficient for categories of employees	Maximum amount of bonus considering coefficient (in % from the Maximum basic amount of bonus)
Starting line-up	1	100%
Substitute players who took part in a match and played more than 30 minutes of the full time and extra time of a match	0,75	75%
Substitute players who took part in a match and played less than 30 minutes of the full time and extra time of a match	0,5	50%
Substitute players who did not take part in a match (except goalkeeper)	0,3	30%
Substitute goalkeeper who did not take part in a match	0,5	50%
Injured players	0,75	75%

11. Art. 6.2 of the regulations establish that the bonuses shall be paid on 31 July 2022.
12. On 6 April 2022, the player put the club in default and requested payment of EUR 57,060, corresponding to the outstanding part of the signing bonus, within 15 days.

13. On 4 May 2022, the player put the club in default again and requested payment of EUR 149,708.50, corresponding to the outstanding part of the signing bonus (EUR 57,060), as well as the salaries for February 2022 (half), March 2022, April 2022 and May 2022, within 3 days.
14. On 9 May 2022, the player terminated the contract with the club, due to the outstanding remuneration.
15. On 9 August 2022, the player signed an employment contract with the Swedish club, Djurgårdens IF valid as from 9 August 2022 until 31 December 2024, including a monthly salary of SEK 100,000 (approx. EUR 9,000). Furthermore, Djurgårdens IF undertook to pay the following “*sign-on fee*” to the player:
  - SEK 1,000,000 (approx. EUR 89,000) on 31 August 2022;
  - SEK 1,000,000 (approx. EUR 89,000) on 31 March 2023.

## II. Proceedings before FIFA

16. On 11 May 2022, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### a. Position of the player

17. In his claim, the player lodged a claim against FC Khimki in front of FIFA and requested payment of the following monies:
  - EUR 57,060 net as outstanding part of the signing fee, plus 5% interest p.a. as of 2 March 2022;
  - EUR 13,235.50 net as half of his outstanding salary of February 2022, plus 5% interest p.a. as of 11 March 2022;
  - EUR 26,471 net as outstanding salary of March 2022, plus 5% interest p.a. as of 11 April 2022;
  - EUR 26,471 net as outstanding salary of April 2022, plus 5% interest p.a. as of 11 May 2022.
  - EUR 635,304 net as compensation for breach of contract, corresponding to the residual value of the contract (salaries of May 2022 until May 2024; 24x EUR 26,471), plus 5% interest p.a. as of 10 May 2022.
18. In his claim, the player argued that his annual earning was defined as EUR 317,647, which leads to a monthly salary of EUR 26,471 (EUR 317,647/12).

19. Taking into account the above, and since a total amount of EUR 149,708.50 remained outstanding at the moment of termination, even after having put the club in default, the player held having had just cause to terminate the contract in accordance with art. 14bis RSTP.

**b. Position of the club / counterclaim**

20. In its reply, the Respondent rejected the player's claim and lodged a counterclaim against the player, requesting payment of the following amount:

- EUR 635,294 as compensation for breach of contract, corresponding to the residual value of the contract, plus 5% interest p.a. as of 10 May 2022.

21. The club maintained that the first default notice dated 6 April 2022 went into their SPAM folder and was therefore not answered.

22. The club further pointed out that the player did not terminate the contract after the first default notice, even though it remained unanswered and that he therefore "*forfeited*" his right to terminate.

23. Moreover, the club confirmed having received the second default notice dated 4 May 2022, but held that it was a short deadline with only one business day.

24. Furthermore, the club stated that it remitted the outstanding sign-on fee (RUB 4,729,332.60) on 16 May 2022 to the player.

25. The club argued that art. 14bis RSTP was not fulfilled since the outstanding sign-on fee cannot be considered as salary in the sense of art. 14bis RSTP.

26. Further, the club argued that the outstanding remuneration (EUR 72,549, corresponding to the sign-on fee and a part from the salary of March 2022) did not give the player just cause to terminate the contract.

27. Along those lines, the club held that the salaries for April and May 2022 were not yet due (due date allegedly 10 May 2022).

28. The club also held that the player terminated the contract during a public holiday, therefore in bad faith.

29. The club pointed out that, on 9 June 2022, it paid the following amounts to the player:

- RUB 1,752,508.78 (approx. EUR 26,900), corresponding to the residual salary of March 2022;
- RUB 1,839,512.63 (approx. EUR 28,000), corresponding to the salary of April 2022;
- RUB 267,562.19 (approx. EUR 4,100), corresponding to the salary of May 2022 (3 days effectively worked).

### **c. Reply of the player to the counterclaim**

30. In his reply to the counterclaim, the player rejected the club's claim and reiterated his position.
31. He acknowledged receipt of the payments from the club dated 16 May 2022 and 9 June 2022, but insisted that those payments were received after the termination and that he remains entitled to the interest for late payments.
32. Moreover, the player held that his monthly salary amounted to EUR 26,471 and that therefore the outstanding sign-on fee for itself does constitute a debt of more than two salaries.
33. Regarding the first default notice, the player argued that he duly notified the club, when he sent the notice to the club's official email address indicated on its website.
34. On account of the above, the player held having had just cause to terminate the contract in accordance with art. 14bis RSTP.
35. Moreover, the player held that the debt of the club was significant at the moment of termination:
  - The sign-on fee (more than two monthly salaries)
  - 76% of the salary for March 2022
  - The entire salary for April 2022.
36. In this regard, the player held that the salary of April 2022 was due on 10 May 2022 in principle, but since it was a public holiday, it should have been paid before (on 6 May 2022).
37. Due to payments remitted by the club, the player amended his request for compensation and deducted the partial payment of May 2022 (3 days). Therefore he claims EUR 631,169.66 plus interest.

#### d. Amendment of the player

38. On 26 September 2022, the player amended his claim against the club and requested payment of the following bonus payments:

Date	Match	Result	Time played	Coefficient	Amount of bonus
13.03.2022	FC Khimki – FC Sochi	1:1 (draw)	'1 - '64	1	RUB 287,000
19.03.2022	FC Ural – FC Khimki	0:1 (victory)	'65 - '90	0,5	RUB 287,500
01.04.2022	FC Rubin – FC Khimki	2:3 (victory)	'1 - '55	1	RUB 575,000
17.04.2022	FC Nizhny Novgorod – FC Khimki	0:0 (draw)	'46 - '90	0,75	RUB 215,250
24.04.2022	FC Khimki – FC Krylia Sovetov	4:1 (victory)	'1 - '45	1	RUB 575,000
01.05.2022	FC Khimki – FC Ufa	1:1 (draw)	'1 - '40	1	RUB 287,000
				<b>TOTAL:</b>	<b>RUB 2,226,750</b>

39. The Player argued that the condition set in art. 2.4 of the regulations is fulfilled and that he therefore is entitled to the bonuses as per regulations.
40. He requested interest of 5% *p.a.* as of 1 August 2022 (due date 31 July 2022).

#### e. Position of the club to the amendment

41. The club failed to send its position to the amendment of the player.

#### f. Position of the new club as intervening party

42. The player's new club endorsed the player's position.
43. Djurgardens IF maintained that it had a long relationship with the player from before his time in Russia and that the player unilaterally contacted the club after he returned to Sweden.

### III. Considerations of the Dispute Resolution Chamber

#### a. Competence and applicable legal framework

44. 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 11 May 2022 and submitted for decision on 7 March 2023. Taking into account the wording of art. 34 of the October 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.
45. 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 (October 2022 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension.
46. 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 (October 2022 edition), and considering that the present claim was lodged on 11 May 2022, the March 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### b. Burden of proof

47. 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 Transfer Matching System (TMS).

#### c. Merits of the dispute

48. 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

49. The foregoing having been established, the DRC moved to the substance of the matter, and took note of the fact that the parties dispute the justice of the early termination of the contract by the Claimant, based on the alleged non-payment of certain financial obligations by the Respondent as per the contract, in accordance with art. 14bis of the Regulations.
50. 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 the Respondent and, if so, whether the formal pre-requisites of art. 14bis of the Regulations had in fact been fulfilled, in the context of the specificities of the matter at hand.
51. In this framework, the DRC noted that the club argued that the player's first default notice was not received and that the outstanding remuneration was not substantial enough to generate just cause.
52. Further, the Chamber took notice that the Claimant held not having received the following remuneration:
  - The sign-on fee (more than two monthly salaries)
  - 76% of the salary for March 2022
  - the entire salary for April 2022.
53. Furthermore, the Chamber duly noted that Claimant has provided written evidence of having put the club in default before unilaterally terminating the contract and that the club's argument that it has not received the first default notice is not supported by any documentation.
54. The members of the Chamber wished to emphasize that in the case at hand the club bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties.
55. With its payments after the termination, the club acknowledged the outstanding remuneration in principal.
56. Consequently, on account of the above, considering that the Respondent had thus repeatedly and for a significant period of time been in breach of its contractual obligations towards the Claimant, we propose to decide that the Claimant had just cause to unilaterally terminate the employment contract on 9 May 2022 and that, as a result, the Respondent is to be held liable for the early termination of the employment contact with just cause by the Claimant, based on art. 14 of the Regulations.
57. In this regard, the DRC rejected the counterclaim of the club.

## ii. Consequences

58. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
59. The Chamber observed that as to the outstanding remuneration, the player acknowledged the payments of the club dated 16 May 2022 as well as 9 June 2022. However, he held being entitled to interest for late payments. Therefore, we propose to grant the following interest:
- 5% interest p.a. on the amount of EUR 57,060 as of 2 March 2022 until 16 May 2022;
  - 5% interest p.a. on the amount of EUR 26,471 as of 11 April 2022 until 9 June 2022;
  - 5% interest p.a. on the amount of EUR 26,471 as of 6 May 2022 until 9 June 2022.
60. Further, the Chamber established that the player's claim for bonuses is substantiated and remained uncontested. Therefore, in accordance with the general legal principle of *pacta sunt servanda*, the DRC decided to award the player the bonuses of RUB 2,226,750 along with interest of 5% p.a. as of 1 August 2022.
61. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
62. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
63. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.

64. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of EUR 661,775 (25x EUR 26,471, May 2022 until May 2024) serves as the basis for the determination of the amount of compensation for breach of contract.
65. In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
66. Indeed, the player found employment with the Swedish club, Djurgårdens IF. In accordance with the pertinent employment contract. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of EUR 198,000 (22x EUR 9,000; August 2022 until May 2024) in salaries and EUR 178,000 as sign-on fee.
67. Furthermore, we have to take into account the partial payment remitted by the club for May 2022, *i.e.* EUR 4,100.
68. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason *i.e.* overdue payables by the club, and therefore decided that the player shall receive additional compensation.
69. In this respect, the DRC decided to award the amount of additional compensation of USD EUR 79,413, *i.e.* three times the monthly remuneration of the player (3x EUR 26,471).
70. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of EUR 361,088 to the player (*i.e.* EUR 661,775 -EUR 198,000 -EUR 178,000 -EUR 4,100 plus EUR 79,413), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
71. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% *p.a.* as of 10 May 2022 until the date of effective payment.

### iii. Compliance with monetary decisions

72. 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.
73. In this regard, the DRC 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.
74. Therefore, bearing in mind the above, the DRC decided that the club 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.
75. The club 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.
76. The DRC 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.

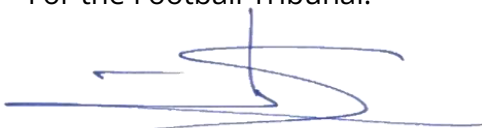
### d. Costs

77. 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.
78. 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.
79. 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 / Counter-Respondent, BESARD SABOVIC, is partially accepted.
2. The Respondent / Counter-Claimant, FC Khimki, has to pay to the Claimant, the following amount(s):
  - 5% interest p.a. on the amount of EUR 57,060 as of 2 March 2022 until 16 May 2022;
  - 5% interest p.a. on the amount of EUR 26,471 as of 11 April 2022 until 9 June 2022;
  - 5% interest p.a. on the amount of EUR 26,471 as of 6 May 2022 until 9 June 2022;
  - **RUB 2,226,750** plus 5% interest *p.a.* as from 1 August 2022 until the date of effective payment;
  - **EUR 361,088 as compensation for breach of contract** plus 5% interest *p.a.* as from 10 May 2022 until the date of effective payment.
3. Any further claims of the Claimant / Counter-Respondent 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. The claim of the Respondent / Counter-Claimant is rejected.
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 / Counter-Claimant 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 / Counter-Respondent** 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

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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 Governing the Football Tribunal).

**CONTACT INFORMATION**

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