

Decision of the Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 10 February 2020,

by **Daan de Jong** (The Netherlands),
DRC judge,

on the claim presented by the player,

Ali Sowe, Gambia
represented by Mr Jan Schweele

as Claimant

against the club,

KS Skenderbeu Korce, Albania

as Respondent

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 23 July 2017, the Gambian player, Mr Ali Sowe (hereinafter: *the player* or *the Claimant*) concluded an employment contract (hereinafter: *the contract*) with the Albanian club, KS Skenderbeu Korce (hereinafter: *the club* or *the Respondent*) valid as from 23 July 2017 until 30 June 2018.
2. On 15 January 2019, the Claimant lodged a claim with FIFA and requested the payment of outstanding remuneration in the total amount of EUR 38,144.23, corresponding to outstanding salaries and bonuses. Said claim was later withdrawn by the Claimant as the parties reached an amicable settlement.
3. On 1 March 2019, the parties concluded a settlement agreement concerning overdue payables resulting from the mentioned employment contract.
4. The above-mentioned settlement agreement stipulated that the club has to pay to the player the sum of EUR 23,500 as follows: (i) EUR 13,500 *“within 7 days from the signature of this Settlement Agreement”* and (ii) EUR 10,000 *“until the 30th April 2019”*.
5. The settlement agreement provided for the following: *“the Parties agree that this Settlement Agreement will come into force only upon the timely receipt of the first instalment of the Settlement Sum by the [Claimant]. If the [Claimant]’s representatives does not receive from the [Respondent] by email the proof of payment of the first instalment of the Settlement Sum until 08th March 2019, the [Claimant] retains the right to the total amount claimed in front of the DRC in the proceedings with ref. no. 19-00147/losv.”*
6. Furthermore, the Claimant and the Respondent in the settlement agreement stipulated: *“If the conditions of this Settlement Agreement are not met within the stated deadlines, the [Claimant] has the right to cancel this Settlement agreement after serving the [Respondent] a final notice granting 48 hours to finally comply with in order to cure any possible payment made. The [Claimant] then retains all rights with respect to the claim presented in front of the DRC, without limitation to, the right of the [Claimant] the full payment of all sums requested to be paid, including the default interest, excluding the partial Settlement Sum that the [Respondent] might have already paid to the [Claimant]. The [Claimant] then also has the right to EUR 5,000 as contractual penalty and 10% interest p.a. on said amount as of the day the Settlement Agreement is breached.”*
7. By correspondence dated 27 May 2019, the Claimant sent a formal notification to the Respondent, reminding it of its obligation to make the payment of EUR 10,000

due in connection with the second instalment of the settlement agreement dated 1 March 2019, granting it 48 hours to comply with the payment, to no avail.

8. On 31 May 2019, the Claimant lodged a new claim in front of FIFA, requesting the following amounts:
 - EUR 24,644.23, plus 5% interests *p.a.*, corresponding to the outstanding salaries and bonuses;
 - EUR 5,000 plus 10% interests *p.a.*, corresponding to the contractual penalty.
9. Despite being invited to do so, the Respondent failed to provide a response.

II. Considerations of the Dispute Resolution Chamber (DRC) judge

1. First of all, the DRC judge analysed whether he was competent to deal with the case at hand. Taking into account the wording of art. 21 of the 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the DRC judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that, in accordance with art. 24 par. 1 and 2 in conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition January 2020), he was competent to decide on the present matter, which concerns an employment-related dispute with an international dimension between a Gambian player and an Albanian club.
3. In particular, and in accordance with art. 24 par. 2 lit. i) of the Regulations on the Status and Transfer of Players, the DRC judge confirmed that he may adjudicate in the present dispute, the value of which does not exceed CHF 200,000.
4. In continuation, the DRC judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions June 2018, June 2019, October 2019 and January 2020), and considering that the present claim was lodged on 31 May 2019, the June 2018 edition of said regulations (hereinafter: *Regulations*) were applicable to the matter at hand as to the substance.
5. The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. In this respect, he started by acknowledging all the above-mentioned facts, the arguments and the documentation submitted by the Claimant, as well as the reply by the Respondent. However, the DRC 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.

6. First, the DRC judge noted that the Claimant and the Respondent entered into an employment contract valid as from 23 July 2017 until 30 June 2018, out of which the amount of EUR 38,144.23, corresponding to salaries and bonuses, remained outstanding. In this context, the DRC judge acknowledged that the Claimant requested this amount in a previous claim, which was subsequently withdrawn (cf. point I. above).
7. In continuation, the DRC judge took note that on 1 March 2019, the Claimant and the Respondent concluded a settlement agreement, stipulating that the club has to pay to the player the sum of EUR 23,500 as follows: (i) EUR 13,500 *"within 7 days from the signature of this Settlement Agreement"* and (ii) EUR 10,000 *"until the 30th April 2019"*.
8. The Single Judge further observed that the settlement agreement provided for the following provision: *"If the conditions of this Settlement Agreement are not met within the stated deadlines, the [Claimant] has the right to cancel this Settlement agreement after serving the [Respondent] a final notice granting 48 hours to finally comply with in order to cure any possible payment made. The [Claimant] then retains all rights with respect to the claim presented in front of the DRC, without limitation to, the right of the [Claimant] the full payment of all sums requested to be paid, including the default interest, excluding the partial Settlement Sum that the [Respondent] might have already paid to the [Claimant]. The [Claimant] then also has the right to EUR 5,000 as contractual penalty and 10% interest p.a. on said amount as of the day the Settlement Agreement is breached."*
9. The DRC Judge noted that, subsequently, the Claimant lodged a new claim before FIFA alleging that the Respondent only paid the first instalment due as per the settlement agreement on 28 March 2019, *i.e.* 20 days after the relevant due date, and of having never proceeded to pay the second instalment in the amount of EUR 10,000.
10. In this context, the Single Judge took note of the Claimant's argument, pointing out that as provided in the settlement agreement, he has the *"right to cancel this Settlement Agreement after serving the [Respondent] a final notice"*.
11. Furthermore, the DRC judge observed that the Claimant is of the opinion that he *"retains the right to the total amount claimed in front of the DRC [during the previous proceedings] and "the Settlement Agreement states that the first party is granted an additional right to a contractual penalty of EUR 5.000,00 with 5% interest p.a. on said amount as of the day the Settlement Agreement is breached."*

12. The Single judge acknowledged that the Claimant deemed being entitled to claim from the Respondent "*the outstanding salaries*", i.e. the sum of EUR 24,644.23 corresponding to the amount originally claimed of EUR 38,144 minus the sum of EUR 13,500 received, plus 5% interests *p.a.* "*from the due date*" as well as the contractual penalty in the amount of EUR 5,000 "*plus the agreed 10% p.a.*"
13. In continuation, the DRC judge took note that the Respondent, for its part, failed to present its response to the claim of the Claimant, despite having been invited to do so. In this way, so the DRC deemed, the Respondent renounced its right to defence and, thus, accepted the allegations of the Claimant.
14. That said, the DRC judge considered the positions of the parties and the documentation provided. At first, the DRC judge observed that it remained undisputed that the first instalment due as per the settlement agreement was not paid in a timely manner by the Respondent and that the second instalment has remained unpaid in its entirety.
15. In view of the above, and referring to art. 12 par. 3 of the Procedural Rules, according to which "*any party claiming a right on the basis of an alleged fact shall carry the burden of proof*", the DRC judge considered the evidence on file and established that it remained undisputed that the Claimant sent a default notice to the Respondent, requesting the payment of the second instalment within 48 hours.
16. Recalling the wording of the settlement agreement, the DRC judge wished to refer to the provision, which granted the Claimant the possibility to cancel the settlement agreement and retaining his rights with respect to the claim previously presented in front of the DRC.
17. In this regard, the DRC Judge considered the above-mentioned provision as triggered, entitling the Claimant to claim outstanding remuneration as per the employment contract from the Respondent, i.e. EUR 38,144.
18. In view of the above, in particular taking into account that the outstanding remuneration based on the employment contract is EUR 38,144 and the fact that the Claimant acknowledged having received the amount of EUR 13,500, the Single Judge observed, therefore, that the amount of EUR 24,644.23 remained outstanding.
19. As a result, the Single Judge decided that, in accordance with the general legal practice of *pacta sunt servanda*, the Claimant is entitled to receive EUR 24,644.23 from the Respondent.

20. In addition, taking into consideration the claim lodged by the Claimant, as well as the constant practice of the DRC, the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* as from 31 May 2019, until the date of effective payment.
21. Furthermore, in accordance with the settlement agreement (cf. point I 6 above), the Single Judge recalled that it stipulated that *“If the conditions of this Settlement Agreement are not met within the stated deadlines, (...) The [Claimant] then also has the right to EUR 5,000 as contractual penalty”*
22. As a result, and given the previous considerations, the Single Judge understood that the conditions for the enforcement of said penalty fee were fully met, and therefore decided that the Claimant is entitled to receive the additional amount of EUR 5,000, corresponding to the agreed penalty. The Single Judge understood that said penalty was also proportionate and reasonable given the circumstances at stake.
23. Nonetheless, the DRC judge rejected the claim for the payment of 10% interests *p.a.* on the aforementioned penalty fee of EUR 5,000, in accordance with the jurisprudence of the DRC.
24. Furthermore, taking into account the consideration under number II./4. above, the DRC judge referred to par. 1 and 2 of art. 24bis 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.
25. In this regard, the DRC judge established that, in virtue of the aforementioned provision, it has competence to impose a sanction on the club. More in particular, the DRC pointed out that, against clubs, the sanction shall consist in a ban from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods.
26. Therefore, bearing in mind the above, the DRC judge decided that, in the event that the club does not pay the amount due to the player within 45 days as from the moment in which the player, following the notification of the present decision, communicates the relevant bank details to the club, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the club in accordance with art. 24bis par. 2 and 4 of the Regulations.

27. Finally, the DRC judge recalled that the above-mentioned sanction will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the Regulations.
28. The DRC judge concluded its deliberations by rejecting any further claim lodged by the Claimant.

III. Decision of the DRC judge

1. The claim of the Claimant, Ali Sowe, is partially accepted.
2. The Respondent, KS Skenderbeu Korçe, has to pay to the Claimant outstanding remuneration in the amount of EUR 24,644.23 plus 5% interest *p.a.* as of 31 May 2019 until the date of effective payment.
3. The Respondent has to pay to the Claimant the amount of EUR 5,000.
4. Any further claim lodged by the Claimant is rejected.
5. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the email address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amounts mentioned under points 2 and 3 above.
6. The Respondent shall provide evidence of payment of the due amounts in accordance with points 2 and 3 above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).
7. In the event that the amounts due plus interest in accordance with points 2 and 3 above are not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
8. The ban mentioned in point 7 above will be lifted immediately and prior to its complete serving, once the due amounts are paid.
9. In the event that the aforementioned sums plus interests are still not paid by the end of the ban of three entire and consecutive registration periods, the present

matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

Note related to the publication:

The FIFA administration may publish decisions issued by the Players' Status Committee or the DRC. Where such decisions contain confidential information, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

Note related to the appeal procedure:

According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

The full address and contact numbers of the CAS are the following:

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