

## **Decision of the DRC Judge**

passed via videoconference, on 12 June 2020,

regarding an employment-related dispute concerning the player Nestor Nicolas Trecco

**BY:**

Daan de Jong (Netherlands), DRC Judge

**CLAIMANT:**

Nestor Nicolas Trecco, Argentina

**RESPONDENT:**

Mons Calpe SC, Gibraltar

## I. FACTS OF THE CASE

1. On 1 January 2019, the Argentine player, Nestor Nicolas Trecco, (hereinafter: *the Claimant*), and the club from Gibraltar, Mons Calpe SC, (hereinafter: *the Respondent*) concluded an employment contract valid as from the date of signature until 30 May 2019 (hereinafter: *the contract*), pursuant to which the Respondent undertook to pay the Claimant a monthly salary of EUR 2,800.
2. According to art. 1.1 of the contract, the Respondent *"has the right to automatically extend this Contract due to international competitions for the term in which the Club continues to participate in such competitions. The Club shall have two separate and independent exclusive and irrevocable options to renew the Term herein for additional independent seasons (the "Additional Seasons") under the same terms and conditions as the initial Term of the Contract. The option shall be deemed automatically exercised unless the Club notifies player at any time during the Term its intention not to renew the Term herein. In the event the Club does not notify the Player otherwise, then such Additional Season(s) shall automatically begin on the date the then current Term ends and shall be for a new Season (a single "season" is the period of a full season of the Gibraltar Premier League, traditionally, but not always exactly, from 1 September Through 31 May of the following year)."*
3. Art. 3.6 of the contract provides the following: *"This Contract may be terminated either (a) upon the expiration of its natural term; (b) if the player violates any of his obligations under this Contract, including those set forth in Exhibit A; (c) pursuant to Section 3,5; (d) by mutual agreement between the parties; (e) unilaterally by one of the parties for reasons of just cause or sporting just cause; (f) unilaterally by the Club for any acts of indiscipline, mutiny or intent to revolt, suppress or intimidate anyone within the Club and or the Club's staff or related parties, and; (g) according to the Club regulations, the regulations of the GFA and/or FIFA. The infringement of this Section's sub-article; (f) will be treated as just cause for the unilateral termination of this Contract without any responsibility by the Club and without any right to get any further payments to the Player.*
4. Moreover, in accordance with art. 3.7 of the contract, *"Should just cause or sporting just cause exist (other than the ones mentioned in this Agreement as just causes) for the premature unilateral termination of this Contract, then such party claiming just cause or sporting just cause shall file a complaint with the Dispute Settlement Committee of the GFA claiming such just cause or sporting just cause. This Contract shall be deemed terminated only upon the publication of a decision of the competent GFA judicial body decreeing such termination, unless the Club pursuant to the terms of this Contract terminates it."*
5. The Claimant, in his claim, considered that the contract had been extended to the season 2019/2020 since, in application of art. 1.1 of the contract, the Respondent had not notified the Claimant of its intention not to renew the terms of the contract. The Claimant added that as of 31 May 2019, he did not receive any information about the date of start of the next season and did not receive the salaries as of April 2019.

6. On 9 August 2019, via letter sent to the Claimant, the Respondent unilaterally terminated the contract (*"in addition to the termination or non-renewal of your player contract"*) arguing that it had fulfilled its obligations toward the Claimant, but the Claimant had a bad attitude, missed several trainings and participated in a *"sit down"* protest before a match. In continuation, the Respondent held that it might file a claim against the Claimant for 3 monthly salaries.
7. The Claimant deemed that by sending the abovementioned letter, the Respondent implicitly recognized that the contract had been extended to the 2019/2020 season.
8. On 16 January 2020, the Claimant lodged a claim against the Respondent in front of FIFA for outstanding remuneration and compensation for breach of contract, claiming the payment of EUR 61,093.33, plus 5% interest *p.a.* as from as from the due dates, corresponding to:
  - a. EUR 12,040 as outstanding remuneration, corresponding to the salaries of April to July 2019 as well as 9 days of August 2019;
  - b. EUR 44,053.33 as compensation for breach of contract, corresponding to:
    - EUR 27,253.33 as residual value of the contract for the 22 days of August 2019 and the salaries from September 2019 to May 2020
    - EUR 16,800 as additional compensation corresponding to 6 monthly salaries
  - c. EUR 5,000 as legal costs.
9. The Respondent submission to the claim was received outside the time limit granted by the FIFA Administration, therefore, in accordance to art. 9 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, the Respondent's reply to the claim shall not be taken into account.

## II. CONSIDERATIONS OF THE DRC JUDGE

1. First of all, the DRC judge analysed whether he was competent to deal with the matter at stake. In this respect, the DRC judge took note that the present matter was submitted to FIFA on 16 January 2020. 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. 1 of the Procedural Rules and confirmed that, in accordance with art. 24 par. 1 and 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players, the DRC judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension.
3. Furthermore, the DRC judge analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the DRC judge confirmed that, in accordance with art. 26 par. 1 and par. 2 of the said Regulations and considering that the present claim was lodged in front of FIFA on 16 January 2020, the January

2020 edition of the Regulations on the Status and Transfer of Players (hereinafter: the Regulations) is applicable to the matter at hand as to the substance.

4. 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, the DRC judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the DRC judge emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.
5. In this respect, the DRC judge acknowledged that, on 1 January 2019, the Claimant and the Respondent concluded an employment contract valid as from the date of signature until 30 May 2019, pursuant to which the Respondent undertook to pay to the Claimant a monthly salary of EUR 2,800. The DRC judge also noted that it remained undisputed that the contract was extended until 31 May 2020, in accordance with art. 1.1 of the contract.
6. Moreover, the DRC judge took that on 9 August 2019, via letter, the Respondent unilaterally terminated the contract invoking just cause on the basis of the Claimant's conduct, mainly by having a bad attitude, having missed several trainings and participated in a "sit down" protest before a match.
7. Having recalled the above, the DRC judge observed that, the Claimant, in his claim, requested outstanding remuneration and compensation for breach of contract in the total amount of EUR 61,093.33, plus 5% interest *p.a.* as from the due dates.
8. The DRC judge further noted that the Respondent submitted its response to the claim outside the time limit granted by the FIFA Administration. Therefore, in accordance to art. 9 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, the Respondent's reply shall not be taken into account.
9. The DRC judge considered the documentation on file and deemed that the main issue of the present dispute is to determine whether the employment contract was unilaterally terminated with or without just cause by the Respondent.
10. In this respect, the DRC judge referred to the termination letter of the club dated 9 August 2019, in which it stated *inter alia* that the reasons for the termination were the player's alleged bad attitude, his alleged absence to several trainings sessions and his participation in a "sit down" protest before a match.
11. In continuation, the DRC judge was eager to emphasise that only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure

the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can always only be an *ultima ratio*.

12. Referring to the concrete circumstances of the case, the DRC judge noted that not only no evidence was provided of the Respondent's accusations against the player or of any attempt of the club to preserve the contract before unilaterally terminating it. The player disputed the Respondent's accusations and the termination of the contract and the claim remained unanswered by the Respondent. Thus, the DRC judge concluded that the Respondent did not have just cause to prematurely terminate the employment contract with the Claimant, since from the documentation and argumentation on file it appears that there would have been more lenient measures to be taken in order to sanction any eventual misconduct of the player, if any, which is at the basis of the termination of the employment contract by the Respondent.
13. Furthermore, the DRC judge noted that the player claims that on the date of termination his salaries for April to July 2019 as well as 9 days of August 2019 were outstanding, which remained undisputed by the Respondent.
14. On account of the above, the DRC judge decided that the Respondent did not have a just cause to unilaterally terminate the employment relationship with the Claimant on 9 August 2019 and, consequently, the latter must bear the financial and/or sporting consequences of the early termination, in addition to any outstanding payments on the basis of the relevant employment contract.
15. First of all, the DRC judge concurred that the Respondent must fulfill its obligations as per employment contract in accordance with the general legal principle of "*pacta sunt servanda*". Consequently, the DRC judge decided that the Respondent is liable to pay to the Claimant the remuneration that was outstanding at the time of the termination, *i.e.* the amount of EUR 11,200. This amount consists of the Claimant's monthly salary for April, May, June and July 2019.
16. Furthermore, considering the Claimant's claim for interest and also taking into account the DRC judge's longstanding jurisprudence, the DRC judge ruled that the club must pay 5% interest *p.a.* on the amount of EUR 11,200 as indicated in point III 2. of the present decision.
17. Having established that the Respondent is to be held liable for the early termination of the employment contract without just cause, the DRC judge focused his attention on the consequences of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the DRC judge decided that the Claimant is entitled to receive from the Respondent an amount of money as compensation for breach of contract.
18. In continuation, the DRC judge focused his attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the DRC Judge 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 Claimant 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.
19. In application of the relevant provision, the DRC judge held that he first of all had to clarify as to whether the pertinent employment contract contains 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 DRC judge established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
  20. As a consequence, the DRC judge determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The DRC judge recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body.
  21. The DRC judge then turned his attention to the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, which criterion was considered by him to be essential. The DRC judge deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows him to take into account both the existing contract and the new contract in the calculation of the amount of compensation.
  22. Bearing in mind the foregoing, the DRC judge proceeded with the calculation of the monies payable to the Claimant under the terms of the employment contract as from its date of termination without just cause by the Respondent, *i.e.* 9 August 2019, until the end of the contract, and concluded that the Claimant would have received in total EUR 28,000 as remuneration had the contract been executed until its expiry date. Consequently, the DRC judge concluded that the amount of EUR 28,000 serves as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.
  23. In continuation, the DRC judge verified as to whether the Claimant 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 judge, 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. The DRC judge noted that the Claimant signed an employment contract with the Argentine club, Cipolletti, valid as from August 2019 until June 2020, *i.e.* 10 months, in accordance with which he would be remunerated with a monthly salary of ARS 25,000, corresponding approx. to EUR 500. Consequently, in accordance with the constant practice of the Dispute Resolution Chamber and the general obligation of the Claimant to mitigate

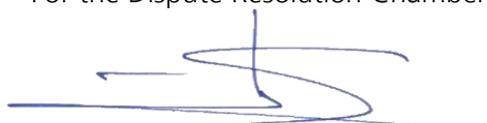
- his damages, such remuneration under the new employment contract – total EUR 5,000 – shall be taken into account in the calculation of the amount of compensation for breach of contract.
24. In view of all of the above, the DRC judge decided that the Respondent must pay the amount of EUR 23,000 to the Claimant as compensation for breach of contract without just case, which is considered by the DRC judge to be a reasonable and justified amount as compensation.
  25. In addition, taking into account the Claimant's request and the DRC's well-established jurisprudence, the DRC judge decided that the Respondent must pay to the Claimant interest of 5% p.a. on the amount of EUR 23,000 as of 16 January 2020, i.e. the date of claim, until the date of effective payment.
  26. Furthermore, taking into account the consideration under number II./3. 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.
  27. In this regard, the DRC judge pointed out 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 and for the maximum duration of three entire and consecutive registration periods.
  28. Therefore, bearing in mind the above, the DRC judge decided that, in the event that the Respondent does not pay the amounts due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, 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 Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.
  29. Finally, the DRC judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the Regulations.
  30. The DRC judge concluded its deliberations in the present matter by establishing that Claimant's claim is partially accepted and that any further claim lodged by the Claimant is rejected.

### **III. DECISION OF THE DRC JUDGE**

1. The claim of the Claimant, Nestor Nicolas Trecco, is partially accepted.

2. The Respondent, Mons Calpe SC, has to pay to the Nestor Nicolas Trecco, the following amount:
  - EUR 11,200 as outstanding remuneration plus 5% interest *p.a.* calculated as follows:
    - a. Over the amount of EUR 2,800, as from 1 May 2019 until the date of effective payment;
    - b. Over the amount of EUR 2,800, as from 1 June 2019 until the date of effective payment;
    - c. Over the amount of EUR 2,800, as from 1 July 2019 until the date of effective payment;
    - d. Over the amount of EUR 2,800, as from 1 August 2019 until the date of effective payment;
  - EUR 23,000 as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 16 January 2020 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.
5. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to [psdfifa@fifa.org](mailto:psdfifa@fifa.org), duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).
6. In the event that the amount due, plus interest as established above is not paid by the Respondent **within 45 days**, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:
  1. The Respondent shall be banned 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. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the [Regulations on the Status and Transfer of Players](#)).
  2. In the event that the payable amount as per in this decision is 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 the FIFA Disciplinary Committee.
7. The ban mentioned in point 6. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.

For the Dispute Resolution Chamber:



**Emilio García Silvero**

Chief Legal & Compliance Officer

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### **NOTE RELATED TO THE APPEAL PROCEDURE:**

According to article 58 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 20 of the Procedural Rules).

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