CAS 2022/A/9086 Giresunspor Kulübü Derneği v. Mamadou Diarra

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Fabio Iudica, Attorney-at-Law in Milan, Italy

in the arbitration between

Giresunspor Kulübü Derneği, Turkey

Represented by Mr Atahan Sevimli, Attorney-at-law, Istanbul, Turkey

- Appellant -

and

Mr Mamadou Diarra, Senegal

Represented by Mr Koray Akalp, Attorney-at-law, Istanbul, Turkey

- Respondent -

I. INTRODUCTION

1. This appeal is brought by Giresunspor Kulübü Derneği against the decision rendered by the Dispute Resolution Chamber (the "DRC" or the "Chamber") of the Fédération Internationale de Football Association ("FIFA") on 9 June 2022 (the "Appealed Decision"), regarding an employment-related dispute arisen with Mr Mamadou Diarra.

II. PARTIES

2. Giresunspor Kulübü Derneği (the "Club" or the "Appellant") is a Turkish professional football club, based in Giresun, Turkey, competing in the First Division (the Süper Lig) of the Turkish Football Championship. It is a member of the Turkish Football Federation (the "TFF") which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

3. Mamadou Diarra (the "Player" or the "Respondent") is a professional football player of Senegalese citizenship, born on 20 December 1997 in Dakar, Senegal.

4. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

III. FACTUAL BACKGROUND AND FIFA PROCEEDINGS

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions on the file and relevant documentation produced in these appeal proceedings. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, this award only refers to the submissions and evidence which the Sole Arbitrator considers necessary to explain its reasoning.

6. On 4 September 2020, the Player and the Club signed an employment contract (the "Employment Contract") to be valid as from the date of signing until the end of the 2020/2021 sporting season. Pursuant to Article 4.1, the Employment Contract would be automatically renewed until the end of the subsequent sporting season 2021/2022 in the case of the Club's being promoted to the TFF Super League at the end of the sporting season 2020/2021.

7. Pursuant to Article 6.1 of the Employment Contract, the Player was entitled to receive the following amounts:

- **Sporting season 2020/2021**:

- EUR 30,000 net on 28 August 2020;

- EUR 10,000 net on 28 September 2020;

- EUR 160,000 net, payable in 10 monthly instalments of EUR 16,000 each, falling due on the last day of each month from 30 September 2020 until 30 June 2021.

In addition, the Parties agreed that "*the Player will be entitled to a premium of 1.000,- EUR in case of winning that will be effective in official league matches and in case the Player's attendance in the match squad of the relevant official league match of the Club (in case two said condition occur together). The winning premium will be paid in total at the end of the official league matches of the relevant season*".

Finally, in case of the Club's promotion to the TFF Super League, the Player would be entitled to a further bonus payment in the amount of EUR 100,000 net, within 30 days following the last official match played by the Club in the 2020/2021 sporting season.

- **Sporting season 2021/2022** (in case of automatic prolongation of the Employment Contract following the Club's qualification in the Super League):

- EUR 50,000 net on 15 August 2021;

- EUR 300,000 net, payable in n. 10 monthly instalments of EUR 30,000 each, falling due on the last day of each month, from 30 August 2021 until 30 May 2022.

8. Furthermore, Article 6.3 of the Employment Contract provided that "*In addition to the bonuses stipulated in clause 6.1 above, the Club shall pay success and team bonuses to the Player, which will be set by the Club on its own discretion. The Player is entitled to get bonuses that shall not be less than other players in the team*".

9. According to Article 6.4, "*All payments under this contract are net payments and will not be reduced by any tax or other amounts. For the sake of clarity, the club will be always obliged to pay all the taxes and the player shall always receive net the indicated amounts. For the avoidance of the doubt, the Club shall only be responsible of the income tax, social contributions and other levies accrued in accordance with the Turkish Tax legislation and the Club shall not be responsible for any other obligations due to the – including but not limited – additional tax duties, social contributions and/or levies related to the other countries legislations. However, in order for the Club to be held liable for tax of income, tax penalty or delay interest within the scope of this article, it is necessary for the Player to declare his income in full, in time and to the relevant tax office. Also, the Player has to inform the Club in a written form by submitting the originals of the relevant tax documents. In the event that the Player violates this obligation, the Club will not have any liability within the scope of delay interest, delay increase or any other penalty and/or sanction under this article*".

10. The Club played its last official match of the sporting season 2020/2021 on 9 May 2021 against Tuzlaspor A.Ș..

11. At the end of the 2020/2021 sporting season, the Club was promoted from the TFF First League to the TFF Super League and as a consequence, the Employment Contract was extended until the end of the sporting season 2021/2022.

12. On 1 April 2021, the Player notified the Club with the calculation of the income tax due based on his annual income tax return for the year 2020 filed with the Turkish tax authorities. According to the documentation issued by the Turkish tax agency, the income tax payable (net of the withholding tax of TL 119,147.20 already paid by deduction from salaries) amounted to TL 308,511.59 + administrative costs (TL 97,20).

13. On 7 October 2021, the Player sent a letter of formal notice to the Club through his legal counsel, claiming that the following amounts had remained outstanding:

- EUR 6,000 net as remaining salary falling due on 30 April 2021;
- EUR 16,000 as net monthly salary falling due on 31 May 2021;
- EUR 16,000 as net monthly salary falling due on 30 June 2021;
- EUR 19,000 as win bonus for the 2020/2021 sporting season in connection with the participation in 19 winning matches of the Club, falling due on 10 May 2021;
- EUR 100,000 net as promotion bonus falling due on 8 June 2021;
- EUR 50,000 net as remuneration falling due on 15 August 2021;
- EUR 30,000 as net monthly salary falling due on 30 August 2021;
- EUR 30,000 as net monthly salary falling due on 30 September 2021;
- TL 308,608.79 as income tax payable to the Turkish tax authorities.

14. Accordingly, the Player requested the Club to pay him the total amount of EUR 267,000 net, corresponding to outstanding remuneration, in addition to TL 308,608.79 corresponding to income taxes based on the Player's tax return for 2020, as well as accrued interest on the relevant amounts, granting the Club a deadline of 10 days following the receipt of the warning letter, failing which he would take legal action to protect his rights.

15. On 9 November 2021, the Club made a partial payment to the Player in the amount of EUR 40,000.

16. On 1 December 2021, the Player lodged a claim in front of FIFA against the Club, arguing that the latter had failed to comply with its financial obligations under the Employment Contract. In his Claim, the Player requested payment of EUR 287,000 corresponding to overdue salaries as well as TL 308,608.79 as income taxes to be borne by the Club, plus 5% interest p.a. from the respective due dates. In addition, the Player also requested the imposition of disciplinary sanctions on the Club in accordance with Article 12bis of the FIFA Regulations on the Status and Transfer of Players ("RSTP").

17. In its Reply to the Player's Claim, the Club did not dispute the Player's allegations. However, the Club submitted documentation regarding several payments allegedly

made to the Player, including an additional payment of EUR 40,000 on 9 December 2021 and also alleged that negotiations were ongoing between the Parties for the amicable settlement of their financial dispute.

18. Therefore, the Club requested the DRC to dismiss the Player's Claim and to "*determine a deadline for parties to conclude a settlement at least 20 days. At this point we reserve all rights to provide the new evidence if any amicable solutions cannot be found by the parties*".

19. On 22 February 2022, the Player acknowledged receipt of the Club's partial payment of EUR 40,000 on 9 December 2021 stating that it needed to be deducted from the total requested amount.

20. On the other hand, the Player rejected the Club's request to FIFA DRC to provide the Parties with a time limit of 20 days to conclude a settlement agreement, denying that there were negotiations ongoing between them. In addition, the Player specified that his salary for December 2021 and January 2022 had also became due in the meantime.

21. In accordance with the Club's partial payment of EUR 40,000, the Player amended his claim as follows:

"*Considering that the partial payment of 40.000 EUR was made after the due date of the respective remunerations of the Claimant, the latter respectfully requests FIFA to order the Respondent to pay him the accrued interest on these amounts. In other words, the following accrued interest is due to the Claimant.*

- interest of 5% per annum from 11 May 2021 until 9 December 2021 for the amount of 17.000 EUR (winning premiums for the 2020/2021 season),
- interest of 5% per annum from 9 June 2021 until 9 December 2021 for the amount of 23.000 EUR (partial payment of the Bonus for promotion to Super League),
- EUR 77,000 net remaining bonus for promotion to Super League- along with its accrued interest of 5% per annum starting from 9 June 2021 until the date of effective payment,
- EUR 50,000 net salary. - along with its accrued interest of 5% per annum starting from 16 August 2021 until the date of effective payment,
- EUR 30,000 net salary. - along with its accrued interest of 5% per annum starting from 31 August 2021 until the date of effective payment,
- EUR 30,000 net salary. - along with its accrued interest of 5% per annum starting from 1 October 2021 until the date of effective payment,
- EUR 30,000 net salary. - along with its accrued interest of 5% per annum starting from 1 November 2021 until the date of effective payment,
- EUR 30,000 net salary. - along with its accrued interest of 5% per annum starting from 1 December 2021 until the date of effective payment,
- EUR 30,000 net salary. - along with its accrued interest of 5% per annum starting from 1 January 2022 until the date of effective payment,
- EUR 30,000 net salary. - along with its accrued interest of 5% per annum starting from 29 January 2022 until the date of effective payment,

- TRY 308,608.79 income tax. - along with its accrued interest of 5% per annum starting from 1 April 2021 until the date of effective payment."

22. In its replica, the Club rejected the Player's amended claims by stating the following: "*As of the date of the claims submitted before FIFA DRC, it is crystal clear that December 2021 and January 2022 salaries were not due, and the relevant salaries cannot be subjected to this case. Furthermore, we reject the assumptions of the Claimant in regard to the December 2021 and January 2022 salaries and we hereby wish to underline that we had no statements about the December 2021 and January 2022 salaries. With this regard in case the Claimant alleges that the relevant salary amounts of the Claimant did not receive, it must be subjected to another claim".*

23. On 9 June 2022, the FIFA DRC rendered the Appealed Decision, by which the Player's claim was accepted, as follows:

1. The claim of the Claimant, Mamadou Diarra, is accepted.

2. The Respondent, Giresunspor, has to pay to the Claimant, the following amount:

(a) EUR 307,000 as outstanding remuneration plus 5% interest p.a. as from the respective due dates until the date of effective payment as follows:

- on the amount of EUR 77,000 as from 9 June 2021
- on the amount of EUR 50,000 as from 16 August 2021
- on the amount of EUR 30,000 as from 31 August 2021
- on the amount of EUR 30,000 as from 1 October 2021
- on the amount of EUR 30,000 as from 1 November 2021
- on the amount of EUR 30,000 as from 1 December 2021
- on the amount of EUR 30,000 as from 1 January 2022
- on the amount of EUR 30,000 as from 1 February 2022

(b) 5% interest p.a. to be paid on the following amounts taken into account the late partial payment of EUR 40,000 on 9 December 2021:

- on the amount of 17.000 EUR from 11 May 2021 until 9 December 2021
- on the amount of 23.000 EUR from 9 June 2021 until 9 December 2021

(c) TRY 308,608.79 as outstanding amount plus 5% interest p.a. as from 1 April 2021 until the date of effective payment

3. Any further claims of the Claimant are rejected.

4. A reprimand together with a fine in the amount of USD 50,000 is imposed on the Respondent. (cf. note relating to the payment of the fine below)

5. Full payment of the amounts mentioned in point 2 (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 of the amounts mentioned in point 2 (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration the ban shall be of three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

7. The consequences shall only be enforced at the request of the Claimant in accordance with article 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".

24. The grounds of the Appealed Decision were served by facsimile to the Parties on 20 July 2022.

IV. GROUNDS OF THE APPEALED DECISION

25. The grounds of the Appealed Decision can be summarized as follows.

26. Firstly, the DRC considered that, in principle, it was competent to decide the present case, which involves an employment-related dispute with an international dimension between a Senegalese player and a Turkish club, based on the provision of Article 23 (1), in combination with Article 22 lit. b) of the FIFA RSTP, March 2022 edition.

27. Moreover, considering that the Player lodged his claim on 1 December 2021, the Chamber established that the August 2021 edition of the FIFA RSTP was applicable to the matter at hand as to the substance.

28. Then, the Chamber recalled the basic principle of the burden of proof, as stipulated in art. 13(5) of the Procedural Rules Governing the Football Tribunal.

29. With regard to the merits, the DRC noted that the dispute between the Parties relates to the payment of the Player's salaries for the period August 2021 until February 2022 as well as a partial bonus due in accordance with the Employment Contract and that it had to decide whether the claimed amounts had in fact remained unpaid by the Club and if

so, whether the latter had a valid justification for not having complied with its financial obligations.

30. In such context, the DRC considered that the Club did not dispute that the outstanding amounts were due, but merely argued that it made an additional payment to the Player which should have been deducted from the amount as claimed and that the Club was in negotiations with the Player in order to find an amicable settlement.

31. In this regard, the Chamber observed that while the Player acknowledged receipt of the Club's partial payment of EUR 40,000 (which should therefore be taken into account in the amount to be awarded to the Player), he denied being involved in settlement discussions with the Club; moreover, the Club did not provide any justification for not having complied with the financial terms of the Employment Contract.

32. Consequently, the Club was held liable to pay the Player the outstanding amounts deriving from the Employment Contract, less EUR 40,000, the receipt of which was confirmed by the Player.

33. The following items was considered in the final calculation:

- EUR 77,000 as residual promotion bonus, payable on 8 June 2021;
- EUR 50,000 as remuneration due on 15 August 2021;
- EUR 180,000 corresponding to 6 monthly instalments of EUR 30,000 each, respectively due at the end of each month in the period from 30 August 2021 until 31 January 2022,
- Interest at 5% rate p.a. on the relevant amounts from the respective due dates,
- TL 308,608.79 corresponding to income tax due by the Club in accordance with Article 6 of the Employment Contract.

34. In addition, it was found that the Club had delayed a due payment for more than 30 days without a *prima facie* contractual basis and that in the past two years it had already been found liable for the same violation, which correspond to an aggravating circumstance under Article 12bis (6) FIFA RSTP. Therefore, the DRC decided to sanction the Club with a reprimand together with a fine of USD 50,000 in accordance with Article 12 bis (4) lit. c) FIFA RSTP.

35. Finally, and in accordance with Article 24(1)(2) FIFA RSTP, the DRC considered the consequences of the Club's possible failure to pay the relevant amount within the deadline of 45 day from notification of the Appealed Decision. In such event, it was decided that a registration ban for a maximum of three entire and consecutive registration periods shall apply on the Club and the matter shall be submitted to the FIFA Disciplinary Committee, if the payment is still not made at the end of the registration ban, at the request of the Player.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. On 9 August 2022, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, 2021 edition (the "CAS Code"). The Appellant chose English as the language of the arbitration and requested that the present case be submitted to a sole arbitrator. The Appellant also requested an extension of fifteen days to file its Appeal Brief.

37. On 16 August 2022, the Respondent informed the CAS Court Office that he did not object to the Appellant's request for an extension of its time limit to file the Appeal Brief and that he agreed to the appointment of a sole arbitrator in the present proceedings and that the procedure be conducted in English language.

38. On the same day, the CAS Court Office confirmed that the Appellant's request for an extension of 15 days of the time limit to file its Appeal Brief had been granted.

39. On 3 September 2022, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

40. On 6 September 2022, the Respondent requested the CAS Court Office that the time limit to file his Answer be fixed upon the payment by the Appellant of its share of the advance of costs of the present procedure.

41. On 8 November 2022, the CAS Court Office acknowledged receipt of the Appellant's payment of the total advance of costs for the present arbitration proceedings and informed the Parties that Mr Fabio Iudica, attorney-at-law in Milan, had been appointed as a Sole Arbitrator in the present proceedings.

42. On 21 November 2022, the Respondent filed his Answer in accordance with Article R55 of the CAS Code.

43. On 21 December 2022, the CAS Court Office informed the Parties that, after consultation with them, the Sole Arbitrator had decided to hold a hearing in the present case.

44. On 10 January 2022, the CAS Court Office informed the Parties that a hearing would be held in the present case on 21 February 2022, by video-conference.

45. On 1 February 2022, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned in duly signed copy by the Parties on the same day.

46. On 21 February 2022, a hearing took place by video-conference. Besides the Sole Arbitrator and Ms Sophie Roud, Counsel to the CAS, the following persons attended:

For the Appellant: Mr Atahan Sevimli, Counsel

For the Respondent: Mr Koray Akalp, Counsel.

47. At the outset of the hearing, the Parties confirmed that they had no objections in respect to the appointment of the Sole Arbitrator and that the Sole Arbitrator has jurisdiction over the present dispute. In their opening statements and in their oral pleadings, the Parties reiterated the arguments already put forward in their respective written submissions.

48. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their rights to be heard and to be treated equally had been duly respected.

VI. SUBMISSIONS OF THE PARTIES

49. The following outline is a summary of the Parties' arguments and submissions which the Sole Arbitrator considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Submissions and Requests for Relief

50. The Appellant's submissions in its Statement of Appeal and in its Appeal Brief may be summarized as follows.

51. The DRC's findings in the Appealed Decision are partially erroneous.

52. First, the Club has always acted in good faith; furthermore, it made some partial payments to the Player and tried to conclude a settlement agreement with the Respondent although FIFA refused to grant the requested 20-day time limit in order for the Parties to conclude their negotiations.

53. The DRC did not take into account all the payments made by the Club with respect to the Player's receivables under the Employment Contract; therefore, the Appealed Decision does not reflect the true amount owed by the Club. The Appellant relied on several bank receipts, which were submitted in support of its allegations.

54. With regard to income tax, according to Turkish legislation, it is calculated at the rate of 40% of the Player's contractual remuneration: 20% is deducted from the Player's salaries and the payment of the residual 20% is the responsibility of the Player.

55. According to the Employment Contract, all the amounts due to the Player were stipulated as net, which means that "*all the amounts in the Employment Contract shall be paid to the Player without deductions. But taking into consideration of that there isn't any provision of the Contract that the income tax of the Player shall be covered by the Club in addition to the net amounts, the Club shall not be responsible to pay the income tax amounts of the Player. Due to the abovementioned reasons the decision which stated that the Club has to pay the Player in the amount of TRY 308.608,79-TL is contrary to law*".

56. Lastly, the fine of USD 50,000 imposed on the Club is excessive and unfair in consideration of the negative financial conditions and inflation in Turkey and should be therefore set-aside.

57. In its Appeal Brief, the Appellant submitted the following requests for relief:

"*1.- To accept this appeal against the decision of the Dispute Resolution Chamber of FIFA.*

2.- To cancel the Decision of FIFA DRC.

3.- To make a decision that the judicial costs and the attorney fees that the Appellant is faced with shall paid by the Respondent".

B. The Respondent's Submissions and Requests for Relief

58. The position of the Respondent is set forth in his Answer and can be summarized as follows.

59. The Club has been in default of payment since April 2021.

60. According to the Employment Contract, the Respondent would be entitled to receive the following amounts:

- a total annual remuneration of EUR 200,000 net for the sporting season 2020/2021;
- a total annual remuneration of EUR 350,000 net for the sporting season 2021/2022, based on the automatic extension of the Employment Contract following the Club's promotion to the Super League;
- EUR 100,000 as net bonus payment in connection with the Club's promotion to the Super League;
- EUR 19,000 as win bonus for participation in n. 19 winning matches played by the Club in the sporting season 2020/2021;
- TL 308,608.79 as income tax based on the Player's income declaration to the Turkish tax authorities;

61. On 7 October 2021, the Player put the Club in default of payment in the amount of EUR 267,000. The Club made a partial payment of EUR 40,000 on 9 November 2021 and a further payment of EUR 40,000 on 9 December 2021, after the filing of the Player's claim with FIFA. However, the Appellant also failed to pay the subsequent monthly salaries which had accrued in the meantime, i.e., the salaries for December 2021 and January 2022.

62. As to the new documentation and arguments put forward by the Appellant in the present proceedings (in connection with additional payments allegedly made by the Club and in relation to the Turkish tax legislation), they were already available to the Club and could be submitted before FIFA in the first instance proceedings, but the Appellant failed to do so. Therefore, they are inadmissible and should not be considered by the Sole Arbitrator in accordance with Article R57(3) of the CAS Code.

63. Moreover, with specific regard to the bank receipts produced by the Appellant as proof of the payments made to the Player, the Appellant has made no effort in order to provide any presentation, leaving it for the Respondent and the Sole Arbitrator to review and explain the content of the said documentation.

64. The Respondent submitted a detailed chart with all the payments listed by the Club and highlighted that most of the documents provided by the Appellant are not related to the present dispute; in one case, the receipt is not even a payment to the Player, beside the fact that some of the accompanying translations are clearly wrong.

65. In essence, the Player argued the following: **a)** all the payments made in TL currency correspond to team bonuses payable by the Club at its discretion to all team members in relation to the victory achieved in the relevant matches, in accordance with Article 6.3 of the Employment Contract, in addition to the individual bonuses. Such payments are not to be deducted from the Player's receivable; **b)** the receipt of the payment in the amount of EUR 40,000 dated 5 November 2021 was submitted twice, both in page 10-11 and 64-65 of the Appellant's Exhibit to the Appeal Brief and should only be counted once; **c)** the payment on 15 December 2021 in the amount of EUR 20,000 was made to the bank account and for the benefit of the Player's agent, Mr Madou Diene, as it corresponds to the agent commission, based on a separate agreement concluded between the Club and the Player's agent.

66. In view of the above, only the following payments among those indicated by the Appellant are relevant with respect to the Player's claim:

- EUR 10,000 on 6/11/2020 corresponding to 2020/2021 season receivable;
- EUR 16,000 on 27/11/2020 corresponding to agreement payment;
- EUR 10,000 on 7/12/2020 corresponding to 2020/2021 season receivable;
- EUR 10,000 on 25/12/2020 corresponding to 2020/2021 season receivable;
- EUR 16,000 on 21/1/2021 corresponding to 2020/2021 season receivable;
- EUR 15,000 on 11/3/2021 corresponding to 2020/2021 season receivable;
- EUR 25,000 on 15/6/2021 corresponding to 2020/2021 season receivable;
- EUR 30,000 on 30/9/2021 corresponding to 2020/2021 season receivable;

- EUR 40,000 on 5/11/2021 corresponding to 2021/2022 season receivable (although at that time the Club still owed part of the Player's salaries for the previous sporting season);
- EUR 40,000 on 9/12/2021 corresponding to 2021/2022 season receivable (although at that time the Club still owed part of the Player's salaries for the previous sporting season).

67. In addition, although it was not mentioned by the Appellant, the Player also received a first payment of EUR 30,000 on 28/8/2020.

68. In any event, the Player never denied having received the above-mentioned payments, which were already deducted from the total claim before the latter was lodged with FIFA on 1 December 2021. Furthermore, the last payment of EUR 40,000 dated 9 December 2021 was also acknowledged by the Player and the claim was amended accordingly.

69. Under the Employment Contract, the Player was entitled to receive the following sums which has remained outstanding:

- EUR 200,000 net as salary for the sporting season 2020/2021;
- EUR 100,000 net as promotion bonus;
- EUR 19,000 net as individual winning bonus for the sporting season 2020/2021;
- EUR 170,000 net as salary for the sporting season 2021/2022 up until November 2022 included,

totally amounting to EUR 489,000 net, in addition to TL 308.608,79 as income taxes.

70. As of 1 December 2021, the Club had only paid a total amount of EUR 202,000 and on 9 December 2021, after the claim was lodged, the Club made one last payment of EUR 40,000 (thus, the total amount was EUR 242,000). The Player acknowledged this last payment in his response to the Appellant's answer before FIFA; however, the claim was further amended with the inclusion of two additional monthly instalments of EUR 30,000 each, for the salaries due on 31 December 2021 and 28 January 2022 which had fallen due in the meantime.

71. As a consequence, the DRC correctly upheld the total claim and awarded the Player the final amount of EUR 307,000 plus interest.

72. As to the Appellant's allegations that the Club was not liable to pay the Player's income taxes under the Employment Contract, they are clearly contradicted by the contractual stipulations between the Parties. As the Turkish tax system requires that Clubs pay withholding taxes to the government (which corresponds to 20% of the players salary for clubs competing in the Super League), in case it is agreed that the salary due to the Player is net (as is the present case), the Club is not entitled to make any deduction on the payments. In addition, according to Turkey tax legislation, football players are also subject to income tax, which is paid through annual income tax return, after deduction of the withholding tax paid by clubs. In this context, pursuant to Article 6.4 of the Employment Contract, payment of the income tax was at the expense of the Club, in

addition to withholding taxes and net salaries payment, contrary to the Appellant's assertions.

73. Therefore, the Club is also liable to pay TL 308,608,79 corresponding to income tax which was calculated by the Turkish tax office based on the Player's tax return for the revenues of the year 2020. The relevant amount and supporting documentation were notified to the Club by the Player on 1 April 2021 and was not contested, nor did the Club raise any objection in this regard during the FIFA proceedings.

74. Finally, with regard to the allegations that the fine imposed on the Club by the Appealed Decision would be excessive, they should be rejected since the Appellant did not lodge the present appeal (also) against FIFA.

75. In his Answer, the Respondent submitted the following requests for relief:

"*1. To reject the claims of the Appellant and confirm the FIFA decision dated 9 June 2022;*

2. To condemn the Appellant to the payment of CGH 10,000 in the favour of the Respondent of the legal expenses incurred;

3. To establish that the costs of the present arbitration procedure shall be borne by the Appellant".

VII. JURISDICTION

76. Article R47 of the CAS Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

77. In its Statement of Appeal, the Appellant relies on Article 57 and Article 58 of the FIFA Statutes, as conferring jurisdiction to the CAS.

78. Pursuant to Article 57 (1) of the FIFA Statutes (2020 Edition), FIFA recognises the jurisdiction of the CAS to *"resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents".*

79. Article 58 (1) of the FIFA Statutes reads as follows: "*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question*".

80. The jurisdiction of the CAS was not contested by the Respondent and is further confirmed by the signature of the Order of Procedure by both Parties.

81. Accordingly, the Sole Arbitrator is satisfied that CAS has jurisdiction to hear the present case.

VIII. ADMISSIBILITY OF THE APPEAL

82. Article R49 of the CAS Code provides the following:

83. "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against*".

84. According to Article 58 (1) of the FIFA Statutes "*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question*".

85. The Sole Arbitrator notes that the FIFA DRC rendered the Appealed Decision on 9 June 2022 and that the grounds of the Appealed Decision were notified to the Parties on 20 July 2022.

86. Considering that the Appellant filed its Statement of Appeal on 9 August 2022, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Sole Arbitrator is satisfied that the present appeal was filed timely.

87. Furthermore, the Appeal complied with all other requirements of Article R48 of the CAS Code and is therefore admissible.

IX. APPLICABLE LAW

88. Article R58 of the CAS Code provides the following:

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

89. The Appellant relies on the application of the relevant FIFA Regulations, namely the FIFA RSTP and subsidiarily Swiss law.

90. In consideration of the above and pursuant to Article R58 of the CAS Code, the Sole Arbitrator holds that the present dispute shall be decided principally according to the FIFA RSTP, with Swiss law applying subsidiarily.

X. LEGAL ANALYSIS

MERITS

91. Addressing the merits of the case at issue, the Sole Arbitrator observes that the present dispute concerns the payment of outstanding amounts due to the Player under the Employment Contract.

92. In principle, the Appellant does not dispute that it had failed to fully comply with its financial obligations towards the Player at the time when the Player's claim was brought before FIFA. What is contested, however, in respect of the Player's receivables, is whether the Appellant still owes a residual amount to the Respondent and, if this is the case, what is the outstanding amount. In this respect, the Appellant contends that the DRC made a wrong assessment of the Player's outstanding remuneration since it did not take into account several partial payments made by the Club to the Player and that the amount awarded in the Appealed Decision "*does not reflect the true amount under any circumstances*".

93. However, the Sole Arbitrator notes that the Appellant does not expressly claim that there were no more overdue payables at the time when the Appealed Decision was rendered, nor does the Club specify which different amount it considers to be still due, if any, merely requesting that the Appealed Decision be set aside by the CAS. At the same time, the Appellant submitted numerous bank transfer receipts, from which the Sole Arbitrator should supposedly infer that the amount awarded to the Player is erroneous and whether the Club still have any financial obligation towards the Player.

94. Besides this, the Appellant also argues that the Player is not entitled to receive any amount in respect of income taxes under the Employment Contract and therefore, that the amount of TL 308.608,79 is not due.

95. On the other hand, the Respondent asserts that the amount awarded by the DRC is correct and must be confirmed. In summary, with regard to outstanding remuneration, the Respondent submits that the relevant sum (EUR 307,000) originates from the first amount requested in the letter of formal notice of 7 October 2021 (EUR 267,000), plus the following salaries which had accrued in the meantime from October 2021 until January 2022, less the amounts paid by the Club on 9 November 2021 (EUR 40,000) and 9 December 2021 (EUR 40,000).

96. With regard to the numerous bank receipts produced by the Appellant with its Appeal Brief, the Respondent first objects to their admissibility since they were not submitted before FIFA although they were already in the possession of the Club at that time.

Subsidiarily, the Player contends that only EUR 212,000 among the payments listed by the Club correspond to payments of the Player's remuneration; on the contrary, according to the Respondent, all of the other bank transfers in Turkish currency allegedly relate to team success bonuses made by the Club in accordance with Article 6.3 of the Employment Contract, except for one completely unrelated payment which corresponds to the Player's agent commission where the beneficiary was not the Player. All such payments should not be considered in the relevant calculation and should therefore not be deducted from the awarded amount. Furthermore, the Player acknowledges another payment of EUR 30,000 made by the Club on 28 August 2020, i.e., at the beginning of the Employment Contract, although it was not included among the Appellant's bank documentation. As a consequence, in accordance with the Player's allegations, the total amount paid by the Club for the Player's remuneration in the period from 28 August 2020 until 28 January 2022 is equivalent to EUR 242,000.

97. With respect to the Appellant's allegation in connection with income taxes, the Respondent insists that the Club is responsible for the relevant payment in accordance with Article 6.4 of the Employment Contract.

A. Is the Player entitled to receive EUR 307,000 as outstanding remuneration under the Employment Contract?

98. In view of the conflicting positions above, in order to decide the present case, the first issue to be resolved by the Sole Arbitrator is whether the amount of EUR 307,000 awarded by the DRC was genuinely outstanding at the time of the Appealed Decision and whether the payments indicated by the Appellant were already considered in the calculation made by the DRC or should be furthered deducted (in whole or in part) from said amount.

99. To this end, the Sole Arbitrator refers his attention to Article 6.1 of the Employment Contract, in order to establish the total amount of the Player's receivables in the relevant period. In this respect, the Sole Arbitrator notes that the Appellant argues that the Player's request in relation to the monthly salaries for December 2021 and January 2022 should not have been considered by the DRC because they were still not due when the claim was filed before FIFA.

100. Such allegation is unfounded and is therefore rejected. In fact, the Sole Arbitrator relies on the principle of Swiss procedural law and jurisprudence, according to which the relevant point in time for the approval of a claim is not the filing of the claim, but when the competent body decides upon the claim (KuKo-ZPO-OBERHAMMER/WEBER, 3rd ed. 2021, article 84 CPC note 12; BRUNNER/GASSER/SCHWANDER, ZPO, 2nd ed. 2016, article 84 CPC note 3; KARL SPÜLER, BASLER COMMENTAR, article 84 CPC, note 16; SFT 9C_130/2015 recital 6.2). The same approach has been recently confirmed by the sole arbitrator in CAS 2021/A/8321 where CAS confirmed the DRC decision to grant the player the requested salary installments which had fallen due after the filing of the relevant claim, before the DRC adjudicated on the player's claim: "*The Sole Arbitrator notes that all instalments fell due before FIFA adjudicated the Respondent's claims. The Sole Arbitrator further observes that the Respondent*

requested before the FIFA DRC the payment of all three instalments in the amount of EUR 210,000.00 plus interests. Thus all instalments form part of the matter in dispute before FIFA. Consequently, the Sole Arbitrator finds that there was no need for the Respondent to either amend his prayers for relief or to lodge a new claim before the FIFA DRC in order to be awarded the total amount of EUR 210,000.00."

101. Therefore, the Sole Arbitrator shall make reference to the period from the beginning of the employment relationship between the Parties up until the time when the FIFA DRC rendered the Appealed Decision and will therefore also consider the Player's request in relation to the monthly instalments which respectively fell due on 31 December 2021 and 28 January 2022 (i.e., after the filing of the Player's claim before FIFA), in the same way as the Appealed Decision. Likewise, the Sole Arbitrator will then consider the total amount of payments made by the Club in the same period in order to establish whether there was still any outstanding sum due to the Player at the time when the Appealed Decision was rendered.

102. That being established, the Sole Arbitrator observes that pursuant to Article 6.1 of the Employment Contract, the Player was entitled to receive the following sums:

- EUR 200,000 as annual remuneration for the sporting season 2020/2021;
- EUR 100,000 as bonus in connection with the Club's promotion to the Super League;
- EUR 19,000 as individual bonus for participating in n. 19 winning matches played by the Club in the sporting season 2020/2021;
- EUR 230,000 as remuneration for the sporting season 2021/2022 in the period from 15 August 2021 until 28 January 2022,

thus, a total amount of EUR 549,000.

103. In this respect, it is recalled that the Appellant did not dispute the Player's entitlement to the relevant amounts and specifically, the occurrence of the events that triggered the bonus payments (i.e., the Club's promotion to the Super League and the participation in the relevant winning matches) has remained uncontested.

104. Therefore, it is undisputed that the Player was entitled to receive EUR 549,000 in the relevant period.

105. As to the payments fulfilled by the Club, the Sole Arbitrator turns his attention to the bank receipts submitted by the Appellant and to the Respondent's objection as to their admissibility in the present arbitration procedure.

106. The Sole Arbitrator observes that, in accordance with Article R57 of the CAS Code, the full power of review granted to CAS panels also results in the admissibility of new prayers for relief and new evidence (CAS 2019/A/6367; CAS 2018/A/5929) with some limitations based on the provision of Article R57(3) according to which the panel has discretion to exclude evidence presented by the parties for the first time if it was already

available to them or could reasonably have been discovered by them before the challenged decision was rendered. However, the rationale of such provision is to avoid evidence submitted in abusive way and /or retained by the parties in bad faith in order to bring it for the first time before CAS (Commentary on The Code of the Court of Arbitration for Sport, Despina Mavromati & Matthieu Reeb, Article R57, §46, page 520) and CAS panels has generally reserved the application of this provision to exceptional circumstances: "*The basis of de novo review is, in essence, the foundation of the CAS appeals system and the standard of review should not be undermined by an overly restrictive interpretation of Article R57 para. 3 of the CAS Code. The discretion to exclude evidence should be exercised with caution, for example, in situations where a party acted in bad faith or may have engaged in abusive procedural behaviour, or in any other circumstances where a CAS panel might, in its discretion, consider it either unfair or inappropriate to admit new evidence"* (CAS 2021/A/8344). As the Sole Arbitrator believe that there are no exceptional circumstances in the present case for excluding such new evidence submitted by the Appellant, the relevant documentation is admissible and will be considered in the following considerations.

107. After reviewing the bank receipts produced by the Appellant, the Sole Arbitrator agrees with the Respondent that only a few payments among those listed by the Club are in relation with the Player's claim. Reference is made to the payments in EUR currency already indicated under para 65 above, for a total amount of EUR 212,000, which also includes the bank transfers made by the Club on 9 November 2021 and on 9 December 2021 of EUR 40,000 each. Incidentally, the Sole Arbitrator notes that the Club's payment of 9 November 2011 was reported twice by mistake, as acknowledged by the Appellant. An additional payment of EUR 30,000 made on 28 August 2020 was also acknowledged by the Player and must therefore be calculated. As a result, based on the evidence on file, it results that the Club paid a total amount of EUR 242,000 for the Player's remuneration in the relevant period.

108. The other bank receipts concern payments in Turkish Lira whereby the relevant documents refer to match bonuses ("*maç primi*" in the original version) or seasonal bonuses. Considering that, in accordance with Article 6.1 of the Employment Contract, the Player was entitled to receive individual bonuses in the amount of EUR 1,000 for each event and in the absence of any evidence (or allegation) submitted by the Appellant to the contrary, the Sole Arbitrator believes that such payments does not relates to individual bonuses but instead to team bonuses paid by the Club in compliance with article 6.3 of the Employment Contract and, in any case, are not attributable to the Player's outstanding receivables. In this respect, the Sole Arbitrator recalls that, at the hearing, the Appellant could not provide any precise information about the nature of these payments and could not exclude in principle that they refer to team bonuses.

109. As a consequence, the Appellant did not fulfil the burden to prove that the payments in TL were referable to the Player's claim and should be deducted from the amount awarded in the Appealed Decision.

110. In view of the above, the Sole Arbitrator is satisfied that the payments made by the Club in relation to the present matter amount to EUR 242,000 and therefore, the Player is still

entitled to receive EUR 307,000 as established by the DRC in the Appealed Decision (EUR 549,000 - EUR 242,000= EUR 307,000).

B. Is the Player entitled to receive the amount of TL 308,608.79 corresponding to income taxes in relation to the year 2020?

111. In order to address this issue, the Sole Arbitrator refers to Article 6.4 of the Employment Contract and recalls that the relevant provision establishes that all the payments to the Player should be net amounts and that the Club "*will be always obliged to pay all the taxes and the player shall always receive net the indicated amounts*", and also that the Club "*shall only be responsible of the income tax, social contributions and other levies accrued in accordance with Turkish Tax legislation*". The relevant clause also provides that such obligation on the Club is conditioned upon the Player's income declaration to the competent Turkish tax office in due time and subsequent notification to the Club.

112. In accordance with the clear wording of the contractual clause, the Sole Arbitrator considers that the Club was responsible for both tax withholding and also it had to indemnify the Player from the payment of the residual 20% income tax based on the Player's tax declaration.

113. In addition, it results from the evidence on file that the Player had complied with the burden of tax declaration to the competent Turkish tax agency and that he had informed the Club in writing accordingly, by letter dated 1 April 2021.

114. As a consequence, the Sole Arbitrator believes that the Appellant is also obliged to bear the amount accrued by the Player as tax income for the year 2020 in the requested amount of TL 308,609.79.

C. Is the fine imposed by the DRC excessive?

115. Finally, as to the Appellant's argument that the fine imposed in the Appealed Decision is excessive, the Sole Arbitrator notes that the Club did not provide any supporting evidence or argumentation, apart from referring to the financial negative conditions in Turkey, which, in any case cannot be considered a valid reason by itself to establish that a disciplinary measure adopted by FIFA is excessive.

116. Moreover, the Sole Arbitrator recalls that according to CAS jurisprudence, "*CAS may amend a disciplinary decision of a federation's judicial body only in cases in which it finds that the relevant judicial body exceeded the margin of discretion accorded to it by the principle of association autonomy, i.e. only in cases in which the judicial body concerned must be held to have acted arbitrarily. This is, however, not the case if the CAS panel merely disagrees with a specific sanction, but only if the sanction concerned is to be considered as evidently and grossly disproportionate to the offence*" (CAS/2019/A/6278). Considering all the circumstances of the present case, and also bearing in mind the wide margin of discretion granted to FIFA's judicial bodies in deciding what sanction to be imposed (CAS 2015/A/4232) the Sole Arbitrator believes that the Appellant's request is unfounded and that there are no indications on file

suggesting that the fine imposed by the DRC on the Club is grossly disproportionate and should be amended.

117. In view of all the foregoing, the Sole Arbitrator has reached the conclusion that the appeal filed by the Club shall be entirely rejected and the Appealed Decision shall be confirmed in its entirety.

118. The Sole Arbitrator shall not address any other issue and all other motions or prayers for relief are dismissed.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Giresunspor Kulübü Derneği against the decision of the FIFA Dispute Resolution Chamber of passed on 9 June 2022 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 9 June 2022 is confirmed.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 16 June 2023

THE COURT OF ARBITRATION FOR SPORT

Fabio Iudica
Sole Arbitrator