Arbitration CAS 2021/A/7799 Yeni Malatyaspor v. Mitchell Glenn Donald, award of 1 February 2022

Panel: Prof. Jacopo Tognon (Italy), Sole Arbitrator

Football
Contractual dispute for outstanding amounts
Financial difficulties linked to the COVID-19 pandemic
COVID-19 pandemic as a force majeure situation
Force majeure

1. **External economic factors do not constitute a justification for non-compliance with financial obligations assumed by a contracting party. In this respect, financial difficulties or the lack of financial means of a club alleged to be linked to the COVID-19 pandemic cannot be invoked as justification for not complying with an obligation to pay.**

2. **Neither in the FIFA COVID-19 Guidelines nor in the FIFA Circular 1720 did the Bureau of the FIFA Council determine that the COVID-19 outbreak was a force majeure situation in a specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure. The Bureau of the FIFA Council stated that clubs or employees could not rely on the Bureau decision to assert a force majeure situation (or its equivalent). Whether or not a force majeure situation (or its equivalent) existed in the country or territory of an national association was a matter of law and fact, which had to be addressed on a case-by-case basis vis-à-vis the relevant laws applicable to any specific employment or transfer agreement.**

3. **For force majeure to exist there must be an objective (rather than a personal) impediment, beyond the control of the 'obliged party', that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible. This definition of force majeure must be narrowly interpreted as it represents an exception to the fundamental obligation of *pacta sunt servanda*, which is at the basis of the legal system and necessary for maintaining contractual stability.**

I. PARTIES

1. Yeni Malatyaspor FK (the "Appellant" or "Malatyaspor") is a Turkish football club affiliated to the Turkish Football Federation (the "TFF"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

2. Mr Mitchell Glenn Donald (the "Player" or the "Respondent") is a professional football player with Canadian nationality.

3. The Appellant and the Respondent shall hereinafter be jointly referred to as the "Parties", where applicable.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and allegations. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 3 August 2018, the Player and the Appellant executed an employment contract (the "Contract") valid as from the date of its signing until 31 May 2020. Hence, for the duration of 2 seasons (i.e. for the seasons 2018/2019 and 2019/2020).

6. According to the Contract, the Appellant undertook to pay the following amounts to the Respondent on the following dates:

- For the season 2018/2019 the total amount of EUR 775,000 net as follows:

  (i) EUR 100,000 net *"cash paid at the time of signature"*;

  (ii) The residual amount in 10 monthly instalments as follows:

    - EUR 67,500 net on 30 August 2018,
    - EUR 67,500 net on 30 September 2018,
    - EUR 67,500 net on 30 October 2018,
    - EUR 67,500 net on 30 November 2018,
    - EUR 67,500 net on 30 December 2018,
    - EUR 67,500 net on 30 January 2019,
    - EUR 67,500 net on 28 February 2019,
    - EUR 67,500 net on 30 March 2019,
    - EUR 67,500 net on 30 April 2019,

- EUR 67,500 net on 30 May 2019.

The Player is also entitled to receive the bonuses to be paid at the latest on 30 July 2019, as follows:

"aa. Everytime if Player reach a total of 5 (goal + assist) at official league games, player will be entitled an amount of total 12.500 EUROS NET everytime this number or a multiple thereof is reached by Player he will receive this amount, that means: If Player reach a total of 10 (goal + assist) at Official league games, player he will be entitled to a total of 25.000 EUROS NET. If Player reach a total of 15 (goal + assist) he will be entitled to a total of 37.500 EUROS NET. If Player reach a total of 20 (goals + assists) will be entitled to a total amount of 50.000 EUROS NET and soforth.

b. if the team goes to EUROPA LEAGUE group stage, 100.000 euro net will be paid to player.

bb. if the team goes Champions League group stage, 200.000 euro net will be paid to player.

The Player only will be entitled bonus (bb) or (b)".

- For the season 2019/2020 the total amount of EUR 775,000 net as follows:

(i) EUR 100,000 net *"advanced payment on or before 20th August 2019 in cash";*

(ii) The residual amount in 10 monthly instalments as follows:

- EUR 67,500 net on 30 August 2019,
- EUR 67,500 net on 30 September 2019,
- EUR 67,500 net on 30 October 2019,
- EUR 67,500 net on 30 October 2019,
- EUR 67,500 net on 30 November 2019,
- EUR 67,500 net on 30 December 2019,
- EUR 67,500 net on 30 January 2020,
- EUR 67,500 net on 28 February 2020,
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bb. if the team goes Champions League group stage, 200.000 euro net will be paid to player.

The Player only will be entitled bonus (bb) or (b)".

7. Moreover, pursuant to the Contract, in the event of a transfer of the Respondent to another club, the Respondent shall be entitled to receive the 15% of the transfer fee net. If the transfer occurs before the payment of the advance payment of EUR 100,000 as per the Contract, the Respondent shall be entitled to receive *"such advanced payment in the amount of EUR 100.000 NET in cash on top of the amount of 15% of the transfer fee received by Club"*.

8. On 19 April 2020, the Appellant sent an e-mail to the Respondent in order to inform the Player about its intention to start a negotiation for *"mutual agreement"*, due to the sudden crisis related to the COVID-19 pandemic outbreak. However, the Respondent did not reply to said e-mail.

9. On 31 May 2020, the Contract expired. Nevertheless, the Respondent continued to train and play for the Appellant since the final of the season was postponed as a due to the outbreak of the COVID-19 pandemic. The Respondent remained at the disposal of the Appellant, training and effectively playing for the Appellant until 25 July 2020. However, the Appellant did not pay any compensation for such period.

10. The Respondent sent 3 (three) notices to the Appellant, on 6 February 2020, 3 June 2020 and 14 July 2020 respectively, demanding it to pay the outstanding remuneration as follows: EUR 276,250 – as outstanding remuneration, EUR 12,500 – as bonuses for five goals scored by the Player himself during the 2019/2020 season.

11. On 7 August 2020, the Appellant requested the Respondent to prepare an answer to the *"Yeni Malatyaspor Covid-19 questionnaire"* which was previously sent to the Respondent. According to the Appellant, the Respondent did not answer to the e-mail.

12. On 21 August 2020, the Appellant sent again its request made on 7 August 2020 to the Respondent. Nevertheless, the Respondent did not answer.

13. On 25 August 2020, the Appellant sent a further demand to the Respondent in which it requested a *"10% decrease on the contract price of the 2019/2020 season with the official notice sent by the notary to the notification address specified in the contract, and that if this request is left unanswered within 2 days, a unilateral decrease of 10% will be made on the contract price in line with FIFA instructions. The claimant football player did not object the notice dated 25 August 2020 with roll number 21273"*.

14. Furthermore, according to the Appellant, the same conditions were offered to all the players of the team and many of them accepted those conditions.

B. Proceedings before FIFA Dispute Resolution Chamber

15. On 22 July 2020, the Respondent lodged a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the Appellant requesting a payment of the total amount of EUR 288,750 net as well as interest at a rate of 5% *p.a.*

16. The Respondent concluded that the Appellant did not fulfil its contractual obligations, since it failed to pay in favour of the Player the outstanding remuneration in the amount of EUR 276,250 net and EUR 12,500 as bonuses for five goals scored by the Respondent during the 2019/2020 season.

17. Furthermore, the Respondent underlined that he *"is not in position to know to which months exactly are those unpaid wages sum concerned, since the amount regarding the ten (10) annual instalments were paid haphazardly and usually delayed, viz., THE RESPONDENT used to pay those sums at random, without any relation with the contractual due dates and in amounts different from the ones lad down in THE CONTRACT".*

18. Moreover, the Respondent underlined that the Appellant owes him an amount equal to approximately 40% of his 2019/2020 season total salaries - hence, more than 4-month wages. Furthermore, the Respondent highlighted to have notified the Appellant about the outstanding amounts on three different occasions.

19. In response to the Respondent's claim, the Appellant referred to the COVID-19 pandemic, explaining that it suffered a 30% decrease in seasonal revenues.

20. At this respect, the Appellant referred to the TFF's Recommendations on Contracts, which was approved by the TFF Board of Directors and announced on 7 May 2020 in line with the directive called Covid-19 Regulatory Instructions adopted by FIFA and put into effect on 7 April 2020.

21. According to the Appellant, *"it has been clearly stated that it is not possible for the parties to completely fulfil their contractual obligations. In the light of this situation, in order to prevent disputes based on contracts that may arise between the parties and to protect the economic status of the clubs, it has been recommended to sign contracts based on consensus, which encourage reconciliation and project mutual negotiations".*

22. Furthermore, the Appellant contested the Respondent's claim regarding the payment of bonuses, stating that, since the Respondent submitted his claim to FIFA on 21 July 2020, there is no legal possibility to *"subject an undue overdue payment to a lawsuit and it must be rejected".*

23. According to the Appellant, the outstanding amount due to the Respondent was equal to EUR 208,750. The reduction was justified by the Appellant because of the COVID-19 pandemic. The Appellant stated that from the amount requested by the Respondent of EUR 276,250,

EUR 67,500 had to be deducted, i.e. *"Covid-19 decrease"* and therefore the Respondent is only entitled to EUR 208,750.

24. The Appellant requested in front of FIFA DRC the following:

- *"The refusal of the amount which is the basis of the case,*
- *The application of the Covid-19 decrease and acceptance of the receivable amount as 208.750,00 EURO,*
- *The refusal of an undue bonus payment of 12.500 EURO".*

25. On 10 December 2020, the FIFA DRC issued its decision in favour of the Player and notified the grounds to the Parties on 2 March 2021. The operative part of the FIFA decision reads as follows:

"1. The claim of the Claimant, Mitchell Glenn Donald, is partially accepted.

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

- EUR 276,250 as outstanding remuneration plus 5% interest p.a. as from 22 July 2020 until the date of effective payment.

3. Any further claims of the Claimant are rejected.

26. In its decision, the FIFA DRC first analysed the arguments of the Appellant who maintained that it tried to reach an agreement with the Respondent; however, since the Respondent did not answer to the Appellant's request, it autonomously decided that the salaries deduction applied to the other players was to be taken as basis for the deduction to be calculated on the Respondent's salaries. Therefore, the Appellant maintained that the salary of May 2020, amounting to EUR 67,500, had to be deducted from the total outstanding amount and, therefore, the Respondent shall only be entitled to receive EUR 208,750 as outstanding remuneration.

27. Taking the above into account, the FIFA DRC established that *"based on the Covid-19 Guidelines as well as FIFA Covid-19 issued on 11 June 2020, the Covid-19 outbreak is not a force majeure situation in any specific country or territory. Moreover, the Covid-19 Guidelines do not exempt and employer from paying a player's salary".*

28. Moreover, the FIFA DRC determined that the Appellant failed to pay to the Respondent the total amount of EUR 276,250 corresponding to the Respondent's outstanding salaries until May 2020.

29. The FIFA DRC decided that *"in accordance with the general legal principle of pacta sunt servanda"*, the Appellant is liable to pay to the Respondent the outstanding remuneration in the total amount of EUR 276,250 plus 5% interest *p.a.* on said amount as of the day of claim, *i.e.* 22 July 2020, until the date of effective payment.

30. Furthermore, the FIFA DRC noticed that the Respondent *"did not submit any proof pertaining to his request for the payment of the bonus, i.e. that he allegedly scored 5 goals during the 2019/2020 season"*. Therefore, it decided to reject this part of the Respondent's claim corresponding to EUR 12,500.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. The written proceedings

31. On 22 March 2021, the Appellant lodged a statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code") with the Court of Arbitration for Sport (the "CAS") challenging the FIFA DRC Decision dated 10 December 2020. In its Statement of Appeal, it requested the appointment of a sole arbitrator.

32. In accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief on 31 March 2021.

33. By letter dated 1 April 2021, the Respondent informed the CAS Court Office that he did not agree to submit this dispute to a Sole Arbitrator. The Respondent asked the CAS Court Office to be granted an extension to file his answer after the Appellant's payment of the advance of costs pursuant to Article R55 of the CAS Code.

34. On 26 May 2021, the CAS Court Office informed the Parties that the Respondent's deadline to file its answer was set within twenty (20) days upon receipt of the letter by courier.

35. On the same date, the Parties were informed that the President of the CAS Appeals Arbitration Division had decided to submit this dispute to a Sole Arbitrator and appointed Mr Jacopo Tognon, attorney-at-law in Padova, Italy, as Sole Arbitrator in this procedure.

36. In accordance with Article R55 of the CAS Code, the Respondent filed its Answer on 16 June 2021.

37. On 16 June 2021, the CAS Court Office invited the Parties to inform the CAS Court Office by 23 June 2021 whether they prefer a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

38. On 23 June 2021, the Respondent filed a letter in which he requested the case to be resolved by the Sole Arbitrator based solely on the Parties' written submissions.

39. On the 24 June 2021, the Parties were informed that the Appellant did not reply within the deadline regarding its preference or not for a hearing to be held. The Parties were further informed that it shall be now for the Sole Arbitrator to decide whether to hold a hearing, in accordance to Article R57 of the CAS Code.

40. On 22 July 2021, after consultation with the Parties, the Parties were informed that the Sole Arbitrator decided for a hearing which would be held on Thursday 5 August 2021 at 14:00 (Swiss time) via videoconference.

41. The Order of Procedure was duly signed on 2 August 2021 by the Respondent and on 3 August 2021 by the Appellant and respectively sent to the CAS Court Office.

B. The hearing

42. The hearing was held on 5 August 2021 via videoconference. Attending – in addition to the Sole Arbitrator and Ms Sophie Roud, Counsel to the CAS – were the following:

- On behalf of the Appellant:
  - (i) Mr Burak Çakır, Counsel
- The Respondent and on behalf of the Respondent:
  - (i) Mr Felipe Augusto Loschi Crisafulli, Counsel

43. Mr Mitchell Glenn Donald stated during his examination that he did not receive any e-mail from the Club. Moreover, since did not live in Istanbul, he could not receive any communication to the address stated in the Contract. In any case, all the emails allegedly sent together with the registered letter were sent after the termination of the contract.

44. The Parties presented in full their arguments and evidence. At the closing of the hearing, they confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.

C. Post hearing submissions

45. By letter of 6 August 2021, the CAS Court Office informed the Parties that, in view of a potential settlement, the proceedings shall be considered suspended for 15 days.

46. By letter of 23 August 2021, the Respondent communicated that the Club made no proposals. With letter dated 24 August 2021, the CAS Court Office informed the Parties that the suspension of the arbitral proceedings was lifted with immediate effect.

IV. SUBMISSIONS OF THE PARTIES

47. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every argument advanced by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions and claims made by the Parties, even if no explicit reference is made in what immediately follows:

A. Appellant's submissions

48. The Appellant's submissions, in essence, may be summarised as follows.

49. The Appellant confirms that the Parties signed the Contract on 03 August 2018 which was valid until 31 May 2020.

50. The Appellant emphasises that *"As is known, all football organizations in the world were suspended throughout March-April-May of 2020 due to the COVID-19 outbreak. Thereafter, a working group was established, including representatives from FIFA, world's highest authority that governs, its member national football federations, the European Club Association (ECA), FIFPRO and the World Leagues Forum (WLF) and firstly, the COVID-19 pandemic was unquestionably recognized as a force majeure state"*.

51. Furthermore, the Appellant underlines that *"With the COVID-19 pandemic process, clubs have made serious financial losses. As a result of the financial studies carried out by the client club, it has been determined that there has been a 30% decrease in seasonal revenues"* and it made its payment obligation in a timely manner until the outbreak of COVID-19 pandemic.

52. Based on the negotiations between the Club and the players, the Appellant states that clubs were unilaterally entitled to decrease the relevant compensations if they could not reach an agreement.

53. Therefore, the Appellant recalls the following criteria to be taken into account in case unilateral decreases to be made by the clubs are brought to justice:

- *whether the club had attempted to reach a mutual agreement with its employee(s);*
- *the economic situation of the club;*
- *the proportionality of any contract amendment;*
- *the net income of the employee after contract amendment;*
- *whether the decision applied to the entire squad or only specific employees.*

54. Subject to these directives, the Appellant states that:

- *it has been determined that there was a 30% decrease in season revenues,*
- *during the Covid-19 pandemic process, clubs suffered a serious economic loss due to a serious increase in EURO / TL parity.*

In this respect, the Appellant provided the exchange rates of the Turkish Central Bank.

55. Moreover, according to the Appellant, the proposed ratio of 10% decrease of the Respondent's Contract *"was kept in good faith at a reasonable and proportionate level although the current*

loss was calculated at a higher level by the club's accounting department" and that *"the 10% rate offered for mutual agreement"* was offered equally to all other players.

56. Furthermore, the Appellant underlines that it signed settlement agreement with several other players and *"made maximum effort to reach mutual agreement with Mitchell Donald. All offers of the club were left unanswered by the football player. In this direction, the decrease made by the club to other players as a basis and a unilateral decrease was made for the May 2020 salary of the player". The Club further deems that "by keeping the decrease rate below 10%", it demonstrated its good will towards its players".*

57. Finally, the Appellant submits that *"it was necessary to make a decrease in contracts in order for the club to continue its vital activities. Hence, the amount of EUR 67,500, which the claimant will receive in May 2020, must be deducted from the total amount due (on an equal basis with other players)".*

58. The Appellant's requests for relief were as follows:

"We request from the Court of Arbitration for sport the annulment of the decision given by FIFA DRC dated on 2 March 2021 and notified to the parties on 2 March 2021".

B. The Respondent's submissions

59. The Respondent's submissions, in essence, may be summarised as follows.

60. Firstly, the Respondent underlines the fact that the Appellant's submissions were inappropriate, contradictory and not supported. Therefore, the appeal should be rejected or dismissed.

61. The Respondent highlights that the Appellant acknowledged that it has a debt towards the Respondent equal to the net sum claimed by the latter.

62. According to the Respondent, the appeal should be rejected or dismissed also in consideration of the fact that the Appellant recognised its debt. Indeed, the Appellant only alleged that the net amount to be recognised in favour of the Respondent should be lesser than that established by FIFA DRC.

63. Furthermore, the Respondent denies that the Appellant complied with its payment obligation in a timely manner; this circumstance has been already clarified before FIFA DRC as well as in the three letters sent to the Appellant by the Respondent.

64. In this respect, the Respondent emphasises that if the Appellant had paid the Respondent as it was provided in the Contract, *"the former would have never confirmed and acknowledged that it is indebted to the latter in the net amount of EUR 276,260.00".* Therefore, it has to be stated that the Appellant has never fulfilled in due course its payment obligations towards the Respondent.

65. With respect to the issue of *force majeure*, the Respondent underlines that FIFA has never declared the existence of a force majeure, but only concluded that each country and each national association could do so, if strictly necessary. Indeed, *"it must be noted that the Appellant*

has never demonstrated that such declaration was made by the Turkish Football Federation, particularly it has never submitted to the CAS the alleged TFF's Recommendations on Contracts".

66. Nevertheless, the Respondent states that the recommendations are *"soft law instruments"* and they are non-binding acts from a legal perspective.

67. Moreover, the Respondent denies the Appellant's allegations that it suffered a 30% decrease in seasonal revenues, as the Appellant did not submit any evidence to prove so. Therefore, the COVID-19 pandemic shall not be treated as an excuse not to fulfil its obligations towards the Respondent.

68. The Respondent underlines that it is not only important to consider whether the losses claimed by the Appellant are legitimate but also if the alleged losses had an impact in the payment obligations of the Appellant towards the Respondent, particularly at the moment of the present proceedings.

69. Furthermore, the Respondent emphasises that *"considering the guiding principles provided in FIFA's recommendations clubs should negotiate collective agreements, where the suspension of a competition requires the amendment of existing employment agreements, otherwise, i.e. should a unilateral variation to an employment agreement be concluded, it would only be valid if it was made according to the national law applicable to the relevant labour agreement"* which was not the case in the current proceedings.

70. The Respondent also refers to the issues regarding the exchange rates in Turkey, stating that the Player was aware of them. In this respect, the Respondent makes reference to the CAS jurisprudence (*i.e.* CAS 2018/A/5779 and CAS 2014/A/3533).

71. The Respondent notes that the *"Turkish lira variated its exchange reference rates in comparison with the euro during the period of time established in the Contract on several occasions".*

72. Moreover, the Respondent states that the Contract was extended, but he was the sole party to the Contract who fulfilled his obligations since he remained at the disposal of the Appellant, training and effectively playing for the Appellant, until 25 July 2020, i.e. almost 2 (two) extra months compared to the period established in the Contract.

73. In the Respondent's view, the Appellant never attempted to reach an agreement with the Respondent but tried to effectively impose reduction of his remuneration, which led to the Respondent's conclusion that the Appellant *"was not in good faith during the whole period of this situation (that is, from March 2020 onwards, including the FIFA claim and the CAS appeal)".*

74. Moreover, the Respondent objects to the motion of the Appellant to indicate Mr Burak Çakir as witness, considering that the above witness *"is irrelevant and shall be disallowed, in accordance with Article R44.2 (5) of the CAS Code".* The Respondent also notes that the Appellant has not complied with Article R44.1 (3) of the CAS Code since it has never filed the witness statements.

75. Finally, the Respondent emphasises that the Appellant allegedly mentioned the period of March, April and May 2020 as force majeure since the leagues were suspended and that it was lacking financial sources.

76. In view of the above, the Respondent's requests for relief were as follows:

"appealed decision be upheld and confirmed that the Appellant is responsible for all legal and other costs, including any applicable attorney or arbitrator fees, related to the CAS procedure".

V. JURISDICTION

77. 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 the 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".

78. Article 58 para. 1 of the FIFA Statutes provides 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 notification of the decision in question".

79. The jurisdiction of CAS derives from Article 58 para. 1 of the FIFA Statutes and Article R47 of the CAS Code. Furthermore, the jurisdiction of the CAS is not contested by any of the Parties in these proceedings and is confirmed by the signature of the Order of Procedure. Therefore, it follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

80. Article R49 of the CAS Code provides as follows: *"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. […]".*

81. Furthermore, Article 58 para. 1 of the FIFA Statutes provides that:

"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".

82. The Appeal was filed within the 21-day limit set by Article 58(1) of the FIFA Statutes and Article R49 of the CAS Code. The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office.

83. The Sole Arbitrator, therefore, finds the appeal admissible.

VII. APPLICABLE LAW

84. Article R58 of the CAS Code provides as follows:

"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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

85. Article 57 para. 2 of the FIFA Statutes provides as follows:

"The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and, additionally, Swiss law".

86. As a result, the Sole Arbitrator shall decide the present matter according to the relevant FIFA regulations, and more specifically the FIFA Regulations on Status and Transfer of Players ("FIFA RSTP"), and the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules"), as in force at the relevant time of the dispute, namely the 2020 edition with respect to the RSTP and the 2020 edition with respect to the FIFA Procedural Rules, and Swiss law shall be applied subsidiarily.

87. Furthermore, in the course of these proceedings, the Parties do not contest the applicable law framework.

VIII. MERITS

88. The Sole Arbitrator has identified the following main issues, which will be addressed by answering to the following question:

(a) Was the amount of the outstanding remuneration of the Respondent due?

A. Was the amount of the outstanding remuneration of the Respondent due?

89. The Sole Arbitrator notes that the Respondent requested, by sending 3 (three) notices respectively on 6 February 2020, 3 June 2020 and 14 July 2020, the Appellant to pay in favour of the Player his outstanding remuneration equal to the total amount of EUR 288,750 net as follows:

- EUR 276,250 net as outstanding remuneration
- EUR 12,500 net as bonuses for 5 goals scored by him during the 2019/2020 season.

90. First of all, with respect to the sum equal to EUR 12,500 net requested by the Respondent as bonus, the Sole Arbitrator agrees with the findings of the FIFA DRC according to which the Player did not discharge his burden of proof with respect to his entitlement to receive such amount. In any event, as the Respondent did not appeal the FIFA DRC decision, and the FIFA decision is therefore final in this respect.

91. With regard to the outstanding remuneration, the Sole Arbitrator notes that the Appellant did not contest to have a debt against the Respondent. However, the Appellant pointed out that the amount of EUR 67,500 as part of the compensation for the month of May 2020 shall be deducted since it represents a reduction of the Player's compensation made by the club as a consequence of the Covid-19 outbreak, which the Appellant argues that it was qualified by FIFA as force majeure. In this respect, the Appellant points out that the impact of the COVID-19 pandemic on the EURO/TL Exchange rate has put the club to the brink of bankruptcy, therefore the Appellant requests CAS to revoke the Appealed decision.

92. As an introductory remark, the Sole Arbitrator notes that according to well-established CAS jurisprudence, external economic factors do not constitute a justification for non-compliance with financial obligations assumed by a contracting party. In this respect, the CAS award in case CAS 2018/A/5537 states the following: *"[t]he alleged financial difficulties the Appellant faced because of the economic crisis in Egypt, and the consequential loss of value of the local currency, are not valid arguments in view of well-established CAS jurisprudence. Financial difficulties or the lack of financial means of a club cannot be invoked as justification for not complying with an obligation to pay (cf. CAS 2016/A/4402 par. 40; CAS 2014/A/3533, par. 59; CAS 2005/A/957, par. 24)"* (par. 80).

93. The Sole Arbitrator further notes that the Appellant refers to the financial challenges faced by the Appellant because of the COVID-19 pandemic which constitutes, from the Appellant's view, a force majeure event as a consequence of which *"clubs have made serious financial losses. As a result of the financial studies carried out by the client club, it has been determined that there has been a 30% decrease in seasonal revenues"*.

94. In this respect, the Sole Arbitrator deems it appropriate to consider the content of the FIFA COVID-19 Guidelines as well as the FIFA COVID-19 FAQ, since they elicit the purpose of providing a common set of guidelines and recommendations in order to mitigate the consequences of the COVID-19.

95. The Sole Arbitrator, however, notes that the FIFA COVID-19 Guidelines as well as the FIFA COVID-19 FAQ did not declare the COVID-19 pandemic as a force majeure event.

96. Indeed, the answer to the question of the FAQ in the FIFA Circular 1720 *"Did the Bureau of the FIFA Council declare a "force majeure" situation in any territory? Can this declaration be relied upon by MAs, clubs, or employees?"*, expressly stated as follows:

> *"Article 27 of the RSTP allows the FIFA Council to decide "(…) matters not provided for and in cases of force majeure".*

In this context, on 6 April 2020, the Bureau made several decisions regarding regulatory and legal issues as a result of COVID-19. In order to temporarily amend the RSTP, the Bureau relied upon article 27 as its source of power, determining that the COVID-19 outbreak was a matter not provided for and a force majeure situation for FIFA and football generally.

The Bureau did not determine that the COVID-19 outbreak was a force majeure situation in a specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure.

For clarity: clubs or employees cannot rely on the Bureau decision to assert a force majeure situation (or its equivalent).

Whether or not a force majeure situation (or its equivalent) exists in the country or territory of an MA is a matter of law and fact, which must be addressed on a case-by-case basis vis-à-vis the relevant laws that are applicable to any specific employment or transfer agreement".

97. According to CAS jurisprudence, for force majeure to exist there must be *"an objective (rather than a personal) impediment, beyond the control of the 'obliged party', that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible"* (see CAS 2013/A/3471; CAS 2015/A/3909). This definition of force majeure must be narrowly interpreted because it represents an exception to the fundamental obligation of *pacta sunt servanda*, which is at the basis of the legal system and necessary for maintaining contractual stability.

98. Indeed, as it is stipulated in Article 12bis of the FIFA RSTP *"Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements"*. Furthermore, *"Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements"*.

99. In addition, in accordance with the principle of the burden of proof, which is a basic principle in every legal system that is also set forth in Article 8 of the Swiss Civil Code, each party to a legal procedure bears the burden of corroborating its allegations. In other words, any party deriving a right from an alleged fact shall carry the burden of proof (see IBARROLA J., La jurisprudence du TAS en matière de football – Questions de procédure et de droit de fond, in BERNASCONI/RIGOZZI (eds.), The Proceedings before the Court of Arbitration for Sport, Berne 2007; CAS 2009/A/1810 & 1811; CAS 2017/A/5182).

100. In view of the above, the Sole Arbitrator finds that the Appellant did not submit any evidence to prove that the financial effect of COVID-19 pandemic on the EURO/TL Exchange rate and the temporary suspension of sports activities caused serious financial difficulties to the Appellant, and, furthermore, the Appellant did not prove that there has been a 30% decrease in seasonal revenues which consequently affected its ability to make the payments.

101. The Sole Arbitrator further notes that the "force majeure" approach submitted by the Appellant must be dismissed for several reasons. Indeed, the suspension of football related activities in Turkey was in any event temporary and the financial difficulties the Appellant

alleged (but failed to prove) to be associated with the pandemic do not justify the failure to make the required payments in accordance with well-established jurisprudence of CAS.

102. In the present case, the Appellant exclusively provides the Turkish Football Federation's Recommendations on the Contracts, a document, which is not applicable before CAS and contains only general assessment as well as the extract of a website of the Turkish government listing the indicative exchange rates on 23 March 2020. Such general documents do however not provide any concrete elements on the Club's financial situation between February and May 2020. In view of the above, the Sole Arbitrator finds that the Appellant did not submit any evidence that the financial effect of COVID-19 pandemic on the EURO/TL Exchange rate and the temporary suspension of sports activities caused serious financial difficulties to the Club, and, furthermore, the Appellant did not prove that there has been a 30% decrease in seasonal revenues which consequently affected its possibility to make the contractually provided payments.

103. The Sole Arbitrator further points out that at the time of termination of the Contract there were outstanding payments already before the outbreak of the COVID-19 pandemic and before the suspension of the Turkish League. Therefore, the COVID-19 outbreak cannot be considered as a justification for having failed to pay such salaries.

104. This approach was also confirmed in the case CAS 2020/A/7603, to which this Sole Arbitrator fully adheres, where that Sole Arbitrator considered that based on the FIFA COVID-19 Football Regulatory Issues *"the Appellant cannot rely on the FIFA Bureau decision to assert a force majeure defence"*.

105. For the sake of completeness, the Sole Arbitrator finally notes that the decrease, made by the Club to the remuneration of some other players with who it had reached an agreement is without prejudice on the Respondent's rights.

106. In view of all the foregoing, the Sole Arbitrator is of the firm opinion that the appeal shall be rejected and the Appealed decision is therefore confirmed.

IX. CONCLUSION

107. In conclusion, after having fully analysed all the factual elements provided by the Parties and the substantive law and regulations applicable to the merits, this Sole Arbitrator considers that the appeal is not grounded, and the Appellant must pay the amount of EUR 276,250 net as outstanding remuneration plus 5% interest *p.a.* as from 22 July 2020 until the date of effective payment.

108. The allegations of the Appellant regarding force majeure situation that would justify a reduction of the Respondent's remuneration were inadmissible and not grounded since the amount of remuneration due to the Respondent was due before the COVID-19 pandemic outbreak.

Accordingly, the Appealed Decision is, therefore, confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Yeni Malatyaspor on 23 March 2021 against the decision rendered by the FIFA Dispute Resolution Chamber on 10 December 2020 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 10 December 2020 is confirmed.

3. (…).

4. (…).

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