Arbitration CAS 2021/A/7817 Yeni Malatyaspor FK v. Ghaylen Chaaleli, award of 1 February 2022

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

Football
Termination of the employment contract with just cause by the player
Non-payment or late payment of the remuneration
Financial difficulties linked to the COVID-19 pandemic
COVID-19 pandemic as a force majeure situation
Force majeure

1. **Non-payment or late payment of remuneration does in principle constitute just cause for termination of the relevant contract as the payment obligation is the main obligation that an employer has towards its employees. In this sense, if a club fails to meet its obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulties by reason of the late or non-payment is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the party has in future performance in accordance with the contract, to be lost. For a party to be allowed to validly terminate an employment contract it must have warned the other party in order to give the latter the chance to remedy and comply with its obligations.**

2. **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.**

3. **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.**

4. **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 Ghaylen Chaaleli (the "Player" or the "Respondent") is a professional football player of Tunisian 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 22 July 2019, the Player and Malatyaspor executed an employment contract (the "Contract") valid from the date of its signing until 31 May 2022, hence, covering a period of three football seasons (i.e. for the seasons 2019/2020, 2020/2021 and 2021/2022).

6. According to the Contract, the Respondent was entitled to receive the amounts detailed below to be paid on the following dates:

   - For the first season 2019/2020 the total amount of EUR 745,000 net as follows:

     (i) EUR 120,000 net on 22 July 2019,

     (ii) EUR 125,000 net on 15 September 2019,

     (iii) The residual amount of EUR 500,000 net in ten monthly instalments of EUR 50,000 net each as from 30 August 2019 until 30 May 2020.

In addition to the above amounts, if Malatyaspor is entitled to participate in UEL group stage in summer 2019, the Player shall be entitled to receive an additional amount of EUR 25,000 net as bonus to "be paid on 90 day".

- For the second season 2020/2021 the total amount of EUR 715,000 net as follows:

  (i) EUR 65,000 net on 30 August 2020,

  (ii) EUR 100,000 net on 15 September 2020,

  (iii) The residual amount of EUR 550,000 net in 10 monthly instalments of EUR 55,000 net each as from 30 August 2020 until 30 May 2021.

- For the third season 2021/2022 the total amount of EUR 650,000 net as follows:

  (i) EUR 100,000 net on 15 October 2021,

  (ii) The residual amount of EUR 550,000 net in 10 monthly instalments of EUR 55,000 net each as from 30 August 2021 until 30 May 2022.

- Personal Performance Bonuses for each season:

  (i) If the player reaches 10 points (1 goal 1 point = 1 assist 1 point): EUR 20,000

  (ii) If the player reaches 15 points (1 goal 1 point = 1 assist 1 point): EUR 30,000

  Note 1: These scores shall be valid for official league games and UEL games

  (iii) If the club is entitled to participate in the UEL group stage: EUR 25,000

  (iv) If the club is entitled to participate in the UCL group stage: EUR 100,000

  Note 2: the Player shall hereby be entitled to only bonus (i) or (ii)

  Related bonus shall "be paid on 90 day". All aforementioned bonuses are net.

7. On 19 March 2020, the TFF announced the suspension of all football activities in Turkey until further notice because of the continuous spread of COVID-19.

8. On 14 April 2020, the Respondent put the Appellant in default requesting the payment of his remuneration for the total amount of EUR 300,000:

   - EUR 125,000 as down payment due on 15 September 2019 (note: although the default notice actually referred to an amount of EUR 127,000, the Player having indicated before FIFA that it was a typo),

   - EUR 25,000 as half of the salary of December 2019,

- EUR 50,000 as salary for January 2020,
- EUR 50,000 as salary for February 2020,
- EUR 50,000 as salary for March 2020.

The Respondent granted to the Appellant 15 days to remedy the default, failing which he would be entitled to terminate the Contract with just cause.

9. Following this request, the Appellant paid EUR 20,000 – referred to as the remaining part of the December 2019 salary.

10. By letter of 29 April 2020 to the Respondent, the Appellant invoked the current suspension of all football activities in Turkey because of the Covid-19 pandemic. Deeming that it was a case of force majeure and guaranteeing that payments would be done upon the *"starting of the leagues, it advised the Player to wait that the "epidemic situation pass"* and not to take any legal action.

11. On 8 May 2020, the Respondent terminated the Contract with the Appellant invoking just cause.

12. On 10 July 2020, the Respondent signed a contract with the Tunisian club Espérance Sportive de Tunis valid from the date of signature until 30 June 2023. According to the said contract, the Respondent was entitled to the following remuneration over the overlapping period of contract with the Appellant:

- Season 2020/2021 12x30,000 Tunisian Dinars (TND): TND 360,000
- Season 2021/2022 12x40,000 TND: TND 480,000

B. Proceedings before FIFA Dispute Resolution Chamber

13. On 6 August 2020, the Respondent lodged a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the Appellant requesting the payment of the amount of EUR 330,000 net as well as interest at a rate of 5% p.a. corresponding to overdue payables and the amount of EUR 1,580,000 net (EUR 1,415,000 as residual value of the Contract + EUR 165,000 as additional compensation pursuant to Article 17 of the FIFA RSTP) as compensation for breach of Contract plus interest.

14. The Respondent concluded that the Appellant *"has severely neglected its financial obligations towards him and that consequently, he had just cause to terminate the contract"* and underlined *"that the overdue payables at the time of the termination had matured prior to the Covid-19 pandemic and also before the suspension of the Turkish league"*.

15. Moreover, the Respondent underlined that the Appellant was attempting to use the COVID-19 pandemic as an excuse, whereas in fact it had paid to another player of the team his salaries of December 2019, January 2020 and February 2020 on 3 April 2020, during the pandemic.

16. 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, which has placed the Appellant on the brink of bankruptcy.

17. Moreover, the Appellant emphasized that *"when the Claimant terminated the contract, the Turkish league was suspended and consequently the club's revenues were equally suspended"*.

18. Furthermore, the Appellant underlined that *"*[the Player] *had already signed a new contract with the Tunisian club Espérance de Tunis and that, therefore, the amounts which he earned with the latter club shall be taken into account"*.

19. In its decision the FIFA DRC first determined whether the Respondent had just cause to terminate the Contract with the Appellant. Taking into account the factual circumstances of the case, the FIFA DRC recalled Article 14bis of the Regulations on Status and Transfer of Players (the "FIFA RSTP"), according to which a player is deemed to have just cause to terminate an employment contract if his/her club finds itself in default of payment of at least two month of salary and the player has put the club in default and granted the club at least 15 days to remedy the default.

20. Taking above into account, the FIFA DRC established that in principle the Player terminated the Contract with just cause.

21. The FIFA DRC then examined the Appellant's arguments in relation to the financial difficulties it was experiencing due to the COVID-19 pandemic.

22. FIFA DRC affirmed that *"based on the contents of the FIFA COVID-19 Guidelines and the FIFA COVID-19 FAQ, the COVID-19 outbreak was not considered a force majeure situation in any specific country or territory. Also, in line with the aforementioned guidelines, no specific employment or transfer agreement was impacted by the concept of force majeure. The analysis whether a situation of force majeure existed, has to be considered on a case-by-case basis, taking into account all the relevant circumstances"*.

23. Moreover, the FIFA DRC emphasised that the Appellant did not submit any form of documentary evidence or allegations that the situation it was facing was to be considered as a situation of force majeure.

24. Additionally, the FIFA DRC established that at the time of termination, a substantial part of the Player's remuneration was outstanding prior to the COVID-19 pandemic. In this regard, FIFA DRC underlined *"that the Covid-19 outbreak may not be used as an opportunity to escape from debts that arose before the COVID-19 outbreak"* and that *"these amounts alone would have allowed* [the Player] *to terminate the contract at an earlier date"*.

25. As a consequence of the above, the FIFA DRC considered that the Respondent had just cause to unilaterally terminate the Contract on 8 May 2020 and, thus, that the Appellant was considered liable for the early termination of the Contract.

26. In this context, FIFA DRC dealt with the consequences of the early termination of the Contract with just cause by the Player and decided that the Appellant was liable to pay in

favour of the Respondent the remuneration that was outstanding at the time of the termination i.e. the total amount of EUR 330,000, and specifically the overdue lump sum payment of EUR 125,000 due on 15 September 2019, part of the salary of December 2019 in the amount of EUR 5,000 as well as EUR 200,000 for the salaries due for the months of January, February, March and April 2020 plus interest of 5% p.a. as of the respective due dates.

27. The first instance body also concluded that the remaining value of the Contract as from its early termination until its natural expiry date amounts to EUR 1,415,000 and that such amount shall serve as the basis for the final determination of the amount due as compensation for breach of Contract.

28. In this framework, it remarked that *"following the early termination of the employment contract at the basis of the present dispute,* [the Player] *was able to mitigate his damage by concluding a new employment contract with the Tunisian club, Espérance Sportive de Tunis. According to the terms of this contract, the Claimant would earn, during the period overlapping with the contract with the Respondent, the total amount of Tunisian Dinars 840,000 or EUR 258,986 (conversion rate as at 10 July 2020, i.e. the date on which the contract with Espérance Sportive de Tunis was signed)".*

29. As a result, the FIFA DRC concluded that the mitigated compensation amounts to EUR 1,156,014.

30. However, bearing in mind Article 17 par. 1, lit ii) of FIFA RSTP, the FIFA DRC held that the Respondent is, on top of the mitigated compensation, entitled to additional compensation equivalent to 3 months of salaries, i.e. 3 x EUR 50,000 (amount of the salary at the time the termination occurred).

31. Finally, the FIFA DRC decided that the Appellant must pay the amount of EUR 1,306,014 to the Respondent as compensation for breach of Contract, which was considered by the FIFA DRC to be a reasonable and justified amount as compensation plus 5% interest p.a. which shall apply on the amount of the compensation, as from 8 August 2020, i.e. the date on which the claim was filed, until the date of effective payment.

32. In light of the above, on 19 November 2020, the FIFA DRC issued the following decision, as amended further to a small correction made by FIFA on 9 December 2021:

> *"1. The claim of* [the Player]*, Ghaylen Chaaleli, is partially accepted.*
>
> *2.* [The Club]*, Yeni Matalya Spor Kulübü, has to pay to* [the Player]*, Ghaylen Chaaleli, the following amounts:*
>
> - *EUR 330,000 as outstanding remuneration plus 5% interest p.a. as follows:*
>
> - *on the amount of EUR 125,000 as from 16 September 2019 until effective payment,*
>
> - *on the amount of EUR 5,000 as from 31 December 2019 until effective payment,*

- *on the amount of EUR 50,000 as from 31 January 2020 until effective payment,*
- *on the amount of EUR 50,000 as from 1 March 2020 until effective payment,*
- *on the amount of EUR 50,000 as from 31 March 2020 until effective payment,*
- *on the amount of EUR 50,000 as from 1 May 2020 until effective payment.*

- *EUR 1,306,014 as compensation for breach of contract plus 5% interest p.a. on the said amount as from 8 August 2020 until the date of effective payment.*

3. Any further claims of [the Player] *are rejected.*

[…]

6. In the event that the amount due, plus interest as established above is not paid by the [Club] *within 45 days, as from the notification by the* [Player] *of the relevant bank details to the Respondent, the following consequences shall arise:*

1. The [Club] *shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*

2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee".

33. The decision with grounds was notified to the Parties on 4 March 2021 (the "Appealed Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. The written proceedings

34. On 24 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 Appealed Decision. In its statement of appeal, it requested the appointment of a sole arbitrator, while on 31 March 2021 the Respondent agreed with such request.

35. In accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief on 4 April 2021.

36. By letter of 7 April 2021, the Respondent requested the CAS Court Office to fix the time-limit for the filing of his answer after the Appellant's payment of the advance of the cost, pursuant to Article R55 of the Code. This request was granted on the same day by the CAS Court Office.

37. By letter of 14 May 2021, the CAS Court Office informed the Parties that the Respondent's deadline to file his answer was of twenty (20) days upon receipt of this letter by courier.

38. On the same date, the Parties were further informed that the Deputy President of the CAS Appeals Arbitration Division appointed Mr Jacopo Tognon, attorney-at-law in Padova, Italy, as Sole Arbitrator in this procedure.

39. In accordance with Article R55 of the CAS Code, the Respondent filed his Answer on 2 June 2021.

40. On 9 June 2021, the CAS Court Office invited Parties to inform the CAS Court Office by 16 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.

41. On 13 June 2021, the Appellant filed a letter in which it requested a hearing to be held in the present matter.

42. On 16 June 2021, the Respondent informed the CAS Court Office that he did not wish a hearing to be held in the present matter.

43. On 2 July 2021, the Parties were informed that the Sole Arbitrator decided for a hearing.

44. On 20 July 2021 and after having been duly consulted the Parties were informed that the hearing would be held on Tuesday 3 August 2021 at 9:30 (Swiss time) via videoconference.

45. On 27 June 2021 and in application of Article R57 of the CAS Code, FIFA was invited to submit its complete case file in relation with this appeal.

46. On the same day, the CAS Court Office, on behalf of the Sole Arbitrator, issued an Order of Procedure, which was duly signed on 27 July 2021 by both Parties.

47. On 29 July 2021, the Parties were provided with the award issued in the case CAS 2020/A/7603 and informed that they would have the opportunity to express their views on the relevancy of this decision during the hearing.

B. The hearing

48. The hearing was held on 3 August 2021 via videoconference. Attending – in addition to the Sole Arbitrator and Ms Pauline Pellaux, Counsel to the CAS – were the following:

- On behalf of the Appellant:
  - (i) Mr Nihat Güman, Counsel
  - (ii) Mr Burak Çakır, Counsel
- On behalf of the Respondent:
  - (i) Mrs Didem Sunna, Counsel

49. During the hearing and with the agreement of the Appellant, the Respondent submitted a copy of his contract with the Tunisian club Espérance Sportive de Tunis.

50. 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

51. By letter of 3 August 2021 and as agreed during the hearing, the CAS Court Office informed the Parties as follows: a) the procedure was suspended for 15 days in order to give to the Parties the opportunity to find an amicable settlement; b) the Respondent was invited to submit an English translation of his contract with Espérance Sportive de Tunis; c) the FIFA file would further be communicated to the Parties upon its receipt and both Parties would be granted the opportunity to submit, within a week, any comments strictly limited to the elements of the FIFA file not already submitted before the CAS.

52. By letter of 10 August 2021, the Respondent submitted the English version of the contract between the Player and the Tunisian Club. The Appellant was consequently granted the opportunity to submit observations strictly limited to this contract. However, the Appellant did not submit any comment.

53. With a letter of 26 August 2021, the FIFA provided a copy of the relevant complete file of the FIFA DRC case. The Parties were granted with the opportunity to submit any comments strictly limited to elements of this file that would not have been already submitted in the CAS file.

54. By letter of 7 September 2021, the Respondent submitted his comments and observations relating to the FIFA file. Besides, the Appellant did not submit any observation.

IV. SUBMISSIONS OF THE PARTIES

55. 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. The Appellant's submissions

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

57. The Decision of Dispute Resolution Chamber is unjustified and did not consider the circumstance and facts raised by the Appellant during FIFA judgement.

58. The Parties signed an employment contract on 22 July 2019 which was valid until 31 May 2022, so for the duration of three seasons. Nevertheless, during the season 2019-2020, 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, its member national football federations, the European Club Association, FIFPRO and the World Leagues Forum. In the Appellant's view, the COVID-19 pandemic was unquestionably recognised as a force majeure.

59. With the COVID-19 pandemic, clubs suffered serious financial losses. It has been determined that there has been a 30% decrease in seasonal revenues. The impact of the COVID-19 pandemic on the EURO/TL Exchange rate has put the club to the brink of bankruptcy. In view of the fact that payments made by the Turkish Football Federation are in Turkish Lira, there have been a significant loss in the Club's income sources.

60. The Player unilaterally terminated the Contract on 11 May 2020, during the period in which the leagues were suspended by the TFF. During such period, the Club approached the Player in good faith declaring that it would have fulfilled its contractual obligations with the start of the leagues.

61. The Appellant underlines that after the unilateral termination of the Contract, the Respondent signed a new contract with Espérance Sportive de Tunis on 10 July 2020 and the Appellant was not able to check the new contract of the Respondent.

62. The Appellant emphasises that FIFA did not share with it the financial terms of the new contract of the Respondent, which differ considerably from those of the Contract, and the Appellant did not have the chance to make its comments on terms and amounts of the new contract of the Respondent.

63. Moreover, the Appellant underlines that it must also be considered that the Respondent is a national team player of Tunisia, but FIFA DRC did not discuss and evaluate the reality and genuine financial terms of the Respondent's new contract.

64. Finally, according to the Appellant, the right to be heard of the Appellant has been violated by FIFA during the DRC judgement. *"Therefore the Mitigated Compensation issue should be addressed when calculating the compensation"*.

65. The Appellant's requests for relief are the following:

"We request from the Court of Arbitration for sport the annulment of the decision given by FIFA DRC dated on 19 November 2020 and notified to the parties on 4 March 2021".

B. The Respondent's submissions

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

67. Firstly, the Respondent underlines the fact that the Appellant did not contest the outstanding debt, both within FIFA and CAS phase. The Appellant only requested FIFA and CAS to take into account its financial status as a result of COVID-19 pandemic as a mitigating factor.

68. The Respondent claims, by recalling the provisions of Article 14bis of the FIFA RSTP, that he had just cause to terminate the Contract since the Appellant there were at least two months of outstanding salary and that the Respondent put the Appellant in default and granted the latter at least 15 days to remedy the default. Therefore, the Respondent followed the criteria set forth in Article 14bis of the FIFA RSTP prior to terminating the Contract, which means that according to FIFA DRC, the Respondent terminated the Contract with just cause.

69. 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.

70. The Respondent takes note of the FIFA COVID-2019 Guidelines and the FIFA's issued document dated 11 June 2020 referred to as FIFA COVID-19 FAQ, in which the COVID-19 outbreak was not considered as a force majeure situation in any specific country or territory. *"Also in line with the abovementioned guidelines, no specific employment contract or transfer agreement was impacted by the concept of force majeure"*.

71. Moreover, the Respondent underlines that the Appellant was already in breach of Contract and a substantial part of the remuneration due to the Respondent was outstanding prior to the COVID-19 pandemic.

72. According to the Respondent, the Appellant is using the COVID-19 outbreak as an opportunity to escape from debts that arose before COVID-19 outbreak and to create an unfounded so-called reason just to legitimate the non-fulfilment of its obligations towards the Respondent.

73. The Respondent emphasises that *"all claimed amounts, except 30 March 2020 salary, were already matured before Covid-19 pandemic and also before the suspension decision of the Turkish Football Federation"*.

74. Moreover, the Respondent underlines the fact that TFF did not consider COVID-19 outbreak as a force majeure and the Appellant received all of its income relating to the 2019/2020 season.

75. As for the force majeure allegations, the Respondent mentioned that the Appellant did not come to any agreement with any of its players regarding the reduction of the allowances.

76. Regarding the Appellant's allegations on the compensation due, the Respondent firstly points out that he presented the new agreement he signed with the Club Espérance Sportive de Tunis to the FIFA file on 5 November 2020.

77. The Respondent underlines, that *"although the Parties did not specifically determine a provision about compensation payable by the Club that persistently fails to pay the Player's remunerations under the existing contract and is in breach of the Contract without just cause, it was regulated under the article 17 of the Regulations on the Status and Transfer of Players and FIFA's commentary of the Regulations that the party in breach of the contract shall pay compensation to the other party".*

78. Finally, the Respondent emphasises that as the new agreement of the Respondent concluded with Espérance Sportive de Tunis was presented and examined by FIFA in detail, there is no doubt that the new employment contract concluded by the Respondent was considered lawfully and in line with the regulations. *"Therefore the relevant findings of the FIFA decision, regarding the termination compensation (mitigated compensation and additional compensation) calculation and deduction is also just and legitimate as well as the other findings".*

79. The Player's request for relief are as follows:

"1) To dismiss the claims of Club Yeni Malatyaspor FK in full;

2) To confirm the decision of the FIFA Dispute Resolution Chamber dated 19 November 2020.

3) To condemn Club Yeni Malatyaspor FK to the payment of CHF 10.000 in the favor of the Respondent of the legal expenses incurred.

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

V. JURISDICTION AND STANDARD OF REVIEW

80. 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".

81. 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".

82. 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.

83. Pursuant to Article R57 of the CAS Code, the Sole Arbitrator has *"full power to review the facts and the law"*. As confirmed by many CAS Panels such power means that any violations of the parties' procedural rights at the previous instance can be "cured" by the appeal before CAS (see MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, Article R57, no. 29 with references to CAS case-law). Accordingly, there is no need for the Sole Arbitrator to entertain the Appellant's allegation of a violation of its right to be heard by the FIFA DRC, since, even if established, *quod none*, such violation would in any event be cured by the present procedure (see for instance CAS 2018/A/6027, para. 53).

VI. ADMISSIBILITY

84. 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. […]"*.

85. 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".

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

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

VII. APPLICABLE LAW

88. 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".

89. 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".

90. As a result, the Sole Arbitrator shall decide the present matter according to the relevant FIFA regulations, and more specifically the 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 October 2020 edition with respect to the FIFA RSTP and the June 2020 edition with respect to the FIFA Procedural Rules, and Swiss law shall be applied subsidiarily.

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

VIII. MERITS

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

(a) Did the Player have just cause to terminate the Contract unilaterally and prematurely?

and, in the affirmative,

(b) What is the compensation due?

A. Did the Player have just cause to terminate the Contract unilaterally and prematurely?

93. Article 13 of the FIFA RSTP defends the principle of contractual stability and it expressly states that *"a contract between a professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement"*.

94. In any event, the principle referred to above may be subject to derogation. Indeed, according to Article 14 of the RSTP *"a contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*.

95. In this respect the FIFA commentary on the RSTP (2006 edition) reads as follows:

"1. The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.

2. The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally.

[…]

5. In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.

6. On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".

96. The concept of *"just cause"* has often been analysed by CAS panels, relying on Swiss law and in particular on the Swiss Code of Obligations ("CO"). It is now well-established by CAS jurisprudence that: *"Under Swiss law, such a 'just cause' exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). The definition of 'just cause', as well as the question whether 'just cause' in fact existed, shall be established in accordance with the merits of each particular case (ATF 127 III 153 consid. 1 a). As it is an exceptional measure, the immediate termination of a contract for 'just cause' must be accepted only under a narrow set of circumstances (ibidem). Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. In the presence of less serious infringement, an immediate termination is possible only if the party at fault persisted in its breach after being warned (ATF 129 III 380 consid. 2.2, p. 382). The judging body determines at its discretion whether there is 'just cause' (Article 337 para. 3 CO). As a result, only a violation of a certain severity justifies the early termination of a contract; and a breach is sufficiently severe only if it excludes the reasonable expectation of continuation of the employment relationship"*(CAS 2015/A/4046 & 4047, at para. 98, referring to Article 337 para. 2 CO; see also CAS 2014/A/3463 & 3464 and CAS 2008/A/1447).

97. In addition to the above, Article 14bis of the FIFA RSTP introduced a specific provision of termination of contracts for just cause in case of outstanding salaries. Specifically, such Article reads as follows:

"1. In the case of a club unlawfully failing to pay at least two monthly salaries on their due dates, the player will be deemed to have just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.

2. For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above.

3. […]*".*

98. Consistent CAS jurisprudence ruled that non-payment or late payment of remuneration does in principle constitute just cause for termination of the relevant contract based on the fact that the payment obligation is the main obligation that an employer has towards its employees. In this sense, if a club *"fails to meet its obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulties by reason of the late or non-payment is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes*

the confidence, which the party has in future performance in accordance with the contract, to be lost" (CAS 2018/A/6605, para. 67; CAS 2016/A/4693, para. 101; CAS 2013/A/3398; CAS 2013/A/3091, 3092, 3093).

99. 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".*

100. Moreover, for a party to be allowed to validly terminate an employment contract it must have warned the other party in order to give the latter the chance to remedy and comply with its obligations (CAS 2018/A/6605; CAS 2015/A/4327; CAS 2013/A/3398; CAS 2013/A/3091, 3092, 3093).

101. As a matter of fact, it needs to be established if the Appellant unlawfully failed to pay the Respondent at least two monthly salaries on the due dates.

102. On 14 April 2020, the date in which the Player sent to the Club the relevant warning letter requesting the payment of its outstanding remuneration, the Appellant was in debt of the total amount of EUR 300,000 – which corresponded to: EUR 125,000 as down payment due on 15 September 2019; EUR 25,000 as half of the salary of December 2019; EUR 50,000 as salary for January 2020; EUR 50,000 as salary for February 2020; EUR 50,000 as salary for March 2020.

103. Therefore, it can be determined that the outstanding amount was not insubstantial.

104. Secondly, the Sole Arbitrator analyses the second condition of application of Article 14bis of FIFA RSTP i.e., whether the Respondent put the Appellant in default in writing and granted a deadline of at least 15 days for the Appellant to fully comply with its financial obligation.

105. As it is undisputed between the Parties, the legal representative of the Respondent notified the Appellant on 14 April 2020 the request of payment of the total amount of EUR 300,000, and granted the Appellant 15 days to remedy the default.

106. The Appellant, in turn, paid only EUR 20,000 – referring to the remaining part of the December 2019 salary. Furthermore, the Appellant did not pay the salary amounting to EUR 50,000 – corresponding to the compensation for the month of April 2020. Therefore, the Appellant did not remedy the default within the 15-day deadline.

107. The Sole Arbitrator notes that the Appellant did not contest the outstanding amount due to the Respondent. The Appellant essentially claims that for unforeseen circumstances the salaries could not be paid due to the COVID-19 pandemic, 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 the CAS to revoke the Appealed decision and *"the annulment of the decision given by FIFA DRC dated on 19 November 2020 and notified to the parties on 4 March 2021".*

108. 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. At this respect, the CAS award in case CAS 2018/A/5537 states as follows: *"*[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)"* (para. 80).

109. 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 allowing the Appellant to suspend payments.

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

111. 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.

112. 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".*

113. 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.

114. 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).

115. 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 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 possibility to make the payments.

116. The Sole Arbitrator further notes that the "force majeure" approach submitted by the Appellant must be dismissed for several reasons. The suspension of football related activities in Turkey was in any event temporary and the financial difficulties the Appellant alleged (but failed to prove) were associated with it do not as such excuse the failure to make the required payments in accordance with well-established jurisprudence of CAS.

117. The Sole Arbitrator further points out that at the time the Respondent terminated the Contract there were unpaid salaries for the period from September 2019 to March 2020 and, thus, there were outstanding payments already before the outbreak of the COVID-19 pandemic and before the relevant termination. Therefore, the COVID-19 outbreak cannot be considered as a justification for having failed to pay such salaries.

118. In consideration of all the foregoing, the Sole Arbitrator deems that the Appellant materially breached the Contract. In fact, under the circumstances set forth above, the Player could not be expected to continue the employment relationship with the Club, and it had no other measures but to terminate the Contract. Therefore, the Sole Arbitrator finds that the Respondent terminated the Contract with just cause.

B. What is the compensation due?

119. After having ascertained that the Club breached the Contract by refusing to timely pay Player's salaries, it shall now be determined the amount of compensation payable by the Appellant to the Respondent.

120. Article 17 of the FIFA RSTP, which, pursuant to CAS jurisprudence (e.g. CAS 2012/A/3033, para. 72, CAS 2019/A/6175, para. 155) is also relevant in case of termination of an employment contract with just cause, reads as follows:

"1. In all cases the party in breach shall pay compensation. Subject to the provisions of article 20 Annex 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

121. The purpose of Article 17 of the FIFA RSTP has been discussed and clarified in several CAS awards. More precisely, the purpose of Article 17 is to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations (CAS 2018/A/6017; CAS 2014/A/3735; CAS 2014/A/3573; CAS 2008/A/1519-1520).

122. Indeed, both Parties of the contract are warned that in case of breach or termination without just cause, the party in breach shall be liable to pay compensation in accordance with the elements set forth by Article 17 of the FIFA RSTP.

123. All the above considered, two basic principles have been recognised in the jurisprudence of CAS and FIFA DRC:

(i) If there is no agreement between the parties with respect to the amount of the compensation or calculation of the compensation, the calculation shall then be made with due consideration of the various criteria contained in Article 17 of the FIFA RSTP;

(ii) The objective calculation shall be made by the Tribunal based on the principle of the so called "positive interest", meaning *"it shall aim at determining an amount which shall put the respective party in the position that same party would have been in if the contract had been performed properly"* (BERNASCONI M., The unilateral breach – some remarks after Matuzalem in: BERNASCONI/RIGOZZI (eds), Sport Governance, Football Disputes, Doping and CAS arbitration, Colloquium, Berne 2009, p. 249).

124. Moreover, it is important to underline that other criteria could be considered in order to determine a fair compensation, such as the so-called "specificity of sport".

125. CAS jurisprudence stated that *"the authors of art. 17 of the FIFA Regulations, achieved a balanced system according to which the judging body has on the one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable…"* (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1856-1857, para. 186).

126. In addition, *"sport, similarly to other aspects of social life, has an own specific character and nature and plays its own important role in our society. Similarly as for the criterion of the "law of the country concerned", the judging body has to take into due consideration the specific nature and needs of sport when assessing the circumstances of the dispute at stake, so to arrive to a solution which takes into reasonable account not only the*

interests of players and clubs, but more broadly those of the whole football community…. In other words, the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interest at stake, the sporting circumstances and the sporting issues inherent to the single case" (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1880-1881, para. 233-240).

127. To summarise, it may be considered negatively if a party engages in a conduct which is in blatant bad faith or that terminates the contract for its own selfish interests. On the contrary, positively will be considered the case of a party that has displayed exemplary behaviour throughout the duration of a contract and possibly even at the occasion of its termination.

128. As a consequence of the above, it has firstly to be clarified whether the employment contract contained a provision according to which the parties agreed certain amount of compensation to be paid in case of breach.

129. In this respect the Sole Arbitrator notes that the Contract does not contain a compensation clause and, therefore, the amount payable in favour of the Player was rightly determined and calculated in compliance with the parameters set forth under Article 17 of the RSTP.

130. According to Article 17(1) of the RSTP:

"(i) in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;

(ii) in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract".

131. The Sole Arbitrator notes that the Player, after the termination of the Contract, signed an employment agreement with Espérance Sportive de Tunis.

132. The Appellant in its Appeal Brief states that *"the Mitigated Compensation issue should be addressed when calculating the compensation. Financial part of the player's new contract has not been submitted to the file. The decision of FIFA DEC did not evaluate with adequate degree of proof that the player has respected his mitigate obligation of the contract,"* arguing that FIFA DRC did not correctly determine the amount of compensation due to the Respondent.

133. However, as it was stated in paragraphs 30 – 35 of the decision, the FIFA DRC (in the calculation of the compensation due to the Respondent) has included the issues related to the contract concluded by the Player with Espérance Sportive de Tunis, especially with respect to

the amount of the remuneration that the Player was going to receive during the contract with Espérance Sportive de Tunis.

134. With respect to the contract of the Player with Espérance Sportive de Tunis that was included in the FIFA file, the Player was going to receive for the 2020/2021 and 2021/2022 seasons remuneration in the total amount of 840,000 Tunisian Dinar (12x30, 000 TND = 360,000 TND for 2020/2021 season + 12x40, 000 TND = 480.000 TND for 2021/2022 season. In this respect, the total amount of the relevant contract for 2020/2021 and 2021/2022 seasons as a Euro rate was 258,986 Euro.

135. Therefore, the FIFA DRC correctly referred to the remaining value of the Employment Contract up to the original date of termination (i.e. 31 May 2022) with respect to the salaries which the Player failed to receive due to early termination, in order to determine the basis of the amount of compensation for breach of contract.

136. Therefore, the Sole Arbitrator notes that the FIFA DRC established that EUR 1,415,000 shall serve as the basis for the final determination of the amount of compensation for breach of Contract.

137. Furthermore, the above remuneration under the new employment contract signed by the Respondent should have been taken into account in the calculation of the amount of the compensation due to the Respondent. Therefore, it was correctly mitigated to the amount of EUR 1,156,014.

138. FIFA DRC also correctly stated that in addition to the mitigated compensation, the Respondent shall be entitled to an amount corresponding to three monthly salaries. Therefore, final compensation amounted to EUR 1,306,014.

139. In view of all the arguments above, the Sole Arbitrator believes that the amount of compensation granted by the FIFA DRC with the Appealed Decision is fair and reasonable in accordance with the applicable criteria and with the general duty of mitigation of damages.

140. It is important to underline that the Player submitted the English version of the Contract and that the Appellant, who with respect to the calculation made by FIFA exclusively alleged a violation of his right to be heard and the amount retained under mitigation, did not react on that. So, from this behaviour, it is clear that the Club did not have any comments or concern to demonstrate the alleged wrong calculation.

IX. CONCLUSION

141. 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 1,306,014 plus 5% interest p.a. on the said amount as from 8 August 2020 until the date of effective payment.

142. The allegations of the Appellant regarding force majeure situation that would justify a reduction or a postponement of the payment of the Respondent's remuneration were inadmissible, and FIFA DRC correctly determined the amount of compensation due to the Respondent. Since the Appellant, which did not challenge the existence of outstanding salaries, however requested the cancellation of the Appealed Decision, the Sole Arbitrator underlines, for the sake of completeness, that the Appellant is obviously also entitled to the payment, with interests, of his outstanding salaries. Accordingly, the Appealed Decision is confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Yeni Malatyaspor FK on 24 March 2021 against the decision rendered by the FIFA Dispute Resolution Chamber on 19 November 2020 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 19 November 2020 is confirmed.

3. (…).

4. (…).

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