



Arbitration CAS 2021/A/8432 Yeni Malatyaspor FK v. Fernando Zuqui, award of 16 September 2022

Panel: Mr Patrick Lafranchi (Switzerland), Sole Arbitrator

Football

Failure of the club to pay outstanding amounts of an employment contract

Standing to be sued

“Vertical” and “horizontal” disputes

Financial difficulties as ground for non-payment

1. **Standing to be sued is a question touching on the substance, as opposed to the admissibility of a claim. Consequently, the question whether a respondent has standing to be sued does not prevent the case to be admissible.**
2. **Disputes adjudicated by FIFA bodies can be qualified as “horizontal” disputes where they involve two or more direct or indirect members of FIFA (such as clubs, players, or coaches) and do not involve FIFA’s particular prerogatives or disciplinary powers and where FIFA has nothing directly at stake. In such context, and provided the relevant other conditions are met, a CAS panel will proceed to examine the appeal and adjudicate the dispute although FIFA was not summoned as respondent. Other decisions involving, for instance, the application of sporting sanctions, purely disciplinary issues, eligibility or registration matters fall within the “vertical” criteria. Disputes which hold both “vertical” and “horizontal” issues are *i.e.* a breach of contract case between a player and a club where the FIFA DRC renders a decision awarding compensation to a player and imposes sporting sanctions against a club.**
3. **It is a longstanding and well-known principle that financial difficulties to satisfy an obligation of payment do not excuse the failure to make the required payment.**

I. PARTIES

1. Yeni Malatyaspor FK (“the Appellant”, “Malatyaspor FK” or “the Club”) is a professional football club based in Malatya, Turkey. It is, affiliated to the Turkish Football Federation (the “TFF”), which in turn is affiliated with the Fédération Internationale de Football Association (“FIFA”).
2. Fernando Zuqui (hereinafter “the Respondent” or “the Player”, together with the Appellant “the Parties”) is an Argentinian football player.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (“the FIFA DRC”) on 8 October 2021 (“the Appealed Decision”), the written submissions of the Parties and the evidence adduced. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. On 21 August 2020, the Appellant and the Respondent concluded a one season employment contract (“the Contract”) in the framework of the Player’s temporary loan from Estudiantes de la Plata (an Argentinian Football Club) to Malatyaspor FK. This contract was valid until 31 May 2021.
5. According to the Contract, the Player was entitled to the following:

“For 2020-2021 Football Season: 450.000 USD NET”

Signing Fee

The player will be entitled 50.000 USD at the time signature.

Salary

The rest of the aforementioned amount (400.000 USD) is to be paid to the PLAYER by the CLUB in 9 (nine) equal installments on the below mentioned dates:

30 September 2020, 31 October 2020, 30 November 2020, 31 December 2020, 31 January 2020, 28 February 2021, 31 March 2021, 30 April 2020 [sic], and 30 May 2021, a monthly salary of 44.444,44-USD

2. The Bonus Payment of The Player and Accommodation

PLAYER will be entitled performance bonuses set out below for each year:

- a. If PLAYER reaches 5 goal within one season : 15.000 USD*
- b. If PLAYER reaches 5 assist [sic] within one season : 10.000 USD*
- d. [sic] If CLUB is entitled to participate the UEFA Europa League group stage : 30.000 USD*
- e. If CLUB is entitled to participate the Champion League group stage : 60.000 USD*

Club will provide free a furnished apartment and a car to player during contract

The club will pay total 6.000 USD for player and his family flight tickets.

For the avoidance of doubts:

P.S: Related bonuses will be paid within 60 days from the day when the bonus condition is met and player must has contractual bound with club. All Aforementioned bonuses are net”.

6. At the time of the Contract’s expiry date, on 31 May 2021, the Club had only paid the Player his signing bonus, air tickets, and full salaries of September and October 2020, and USD 43’778 for the salary of November 2020. This left overdue payables of USD 666 for the November 2020 salary, and the full salaries of December 2020, January 2021, February 2021, March 2021, April 2021 and May 2021, amounting to a total unpaid overdue of USD 267’332.64.

7. On 17 June 2021, the Player sent the following default notice:

“The object of the present communication is to send warning in the terms of Article 12bis FIFA RSTP, to concede you the unextendible and final term of thirteen running days to pay off all overdue sums arising from the referenced employment contract.

Specifically, the sums overdue are:

- a) *The sum of usd 666.- corresponding to the unpaid portion of the November 2020 Salary, payable on 30 November 2020.*
- b) *The sum of usd 44.444,44.- corresponding to the salary of December 2020, payable on 31 December 2020.*
- c) *The sum of usd 44.444,44.- corresponding to the salary of January 2021, payable on 31 January 2021.*
- d) *The sum of usd 44.444,44.- corresponding to the salary of February 2021, payable on 28 February 2021.*
- e) *The sum of usd 44.444,44.- corresponding to the salary of March 2021, payable on 31 March 2021.*
- f) *The sum of usd 44.444,44.- corresponding to the salary of April 2021, payable on 30 April 2021.*
- g) *The sum of usd 44.444,44.- corresponding to the salary of May 2021, payable on 30 May 2021.*

Total sums overdue for all concepts as of 15 June 2021: usd 267.332,64”.

B. Proceedings before the FIFA Dispute Resolution Chamber

8. On 13 July 2021, the Player lodged a claim against the Club before the FIFA Dispute Resolution Chamber (the “DRC”), requesting the payment of USD 267’332.64, plus 5% interest *p.a.* as from the due dates.

9. In its reply to the claim, the Club stated that *“While the player’s contract is in continue, club did a several payments to player”*. The Club thus submitted a series of receipts:

Name:	Date:	Amount
Bank Receipt Garanti BBVA	18/12/2020	USD 22,222
Bank Receipt Garanti BBVA	8/10/2020	USD 6,000
Bank Receipt Garanti BBVA “for Month 10/11”	3/02/2021	USD 66,000
Bank Receipt Garanti BBVA “YMS 2020-2021 Season – Payment for Signing”	3/02/2021	USD 50,000
Bank Receipt Garanti BBVA	13/10/2020	USD 44,444

10. In his reply, the Player argued that the Club was attempting to confuse the FIFA DRC by presenting proof of payments that have already been admitted and recognized and insisted on his initial claim.

11. On 8 October 2021, the DRC passed the Appealed Decision, which reads as follows:

1. *The claim of the Claimant, Fenrando (sic) Zuqui, is accepted.*
2. *The Respondent, Yeni Malatyaspor, has to pay to the Claimant, the amount of USD 267,332.64 as outstanding remuneration plus interest as follows:*
 - *5% interest p.a. over the amount of USD 666 as from 1 December 2020 until the date of effective payment;*
 - *5% interest p.a. over the amount of USD 44,444.44 as from 1 January 2021 until the date of effective payment;*
 - *5% interest p.a. over the amount of USD 44,444.44 as from 1 February 2021 until the date of effective payment;*
 - *5% interest p.a. over the amount of USD 44,444.44 as from 1 March 2021 until the date of effective payment;*
 - *5% interest p.a. over the amount of USD 44,444.44 as from 1 April 2021 until the date of effective payment;*
 - *5% interest p.a. over the amount of USD 44,444.44 as from 1 May 2021 until the date of effective payment;*
 - *5% interest p.a. over the amount of USD 44,444.44 as from 1 June 2021 until the date of effective payment;*
3. *Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.*

4. *A fine in the amount of USD 15,000 is imposed on the respondent (Article 12 bis of the Regulations)*
5. *Pursuant to Article 24 of the Regulations on the Status and Transfer of Players (August 2021 edition), if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*
 1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.*
 2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*
6. *The consequences **shall only be enforced at the request of the Claimant** in accordance with Article 24 para. 7 and 8 and Article 25 of the Regulations on the Status and Transfer of Players.*
7. *This decision is rendered without costs.*
12. On 19 October 2021, the grounds of the Appealed Decision were communicated to the Parties.
13. The DRC held that none of the receipts provided by the Appellant proved that they were related to the claimed amounts since November 2020 and that the claimed amount of USD 267'332.64 thus remained outstanding. Consequently, the DRC established that the Appellant had to pay the total outstanding amount of USD 267'332.64, as agreed in the contract between the parties, plus 5% interest p.a. as from the due dates to the Respondent.
14. Moreover, the DRC referred to Article 12bis para. 2 of the FIFA Regulations on the Status and Transfer of Players (the "RSTP") which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with Article 12bis para. 4 of the Regulations. In this context, the DRC found that the Respondent had already delayed a due payment for more than 30 days without a *prima facie* contractual basis and decided to impose a fine on the Respondent in the amount of USD 15'000 USD.
15. Furthermore, the DRC decided that, in the event that the Appellant does not pay the amounts due to the Respondent within 45 days as from the moment in which the Respondent, following the notification of the present decision, communicates the relevant bank details to the Appellant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Appellant in accordance with Article 24bis para. 2 and 4 RSTP.
16. Finally, the DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with Article 24bis para. 3 of the Regulations.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 8 November 2021 by email and on 9 November 2021 via e-filing, the Appellant filed its Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport (“CAS”). In its Statement of Appeal, the Appellant requested that a sole arbitrator be appointed by the CAS.
18. On 15 November 2021, the Appellant filed its Appeal Brief.
19. On 17 November 2021, the CAS Court Office initiated the procedure and invited the Respondent to state its position on the appointment of a Sole Arbitrator and to submit its Answer.
20. On 23 November 2021, the Respondent agreed with the appointment of a sole arbitrator in this case.
21. On 25 November 2021, the Respondent filed his Answer, together with an exception of inadmissibility for alleged lack of standing to be sued.
22. On 5 January 2022, the CAS Court Office informed the Parties that, pursuant to Article R54 of the Code of Sports-related Arbitration (the “CAS Code”) and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel in the present procedure had been constituted as follows:

Sole Arbitrator: Mr Patrick Lafranchi, Lawyer in Bern, Switzerland
23. On 18 January 2022 and after due consultation with the Parties, the CAS Court Office informed the Parties that the Sole Arbitrator had decided not to hold a hearing in this case. In view of the Respondent’s allegation relating to his standing to be sued, the Sole Arbitrator had however decided to order a second round of written and the Appellant was thus invited to submit a Reply.
24. On 27 January 2022, the Appellant filed its Reply.
25. On 1 February 2022, the Respondent filed his Second Response and the CAS Court Office thus terminated the exchange of written submissions.
26. On 16 February 2022, the CAS Court Office issued the Order of Procedure, which was returned duly signed by both Parties on 17, respectively, 21 February 2022.

IV. THE POSITION OF THE PARTIES

27. The following outline of the Parties’ positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, indeed, has carefully considered all the written submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Position of the Appellant

28. The Appellant neither disputes that the Parties have signed an employment agreement valid from 21 August 2020 until 31 May 2021 nor that it has overdue payables. The Appellant argues however, that the Appealed Decision is unjustified and does not consider its economic difficulties. Additionally, there is no valid reason for the imposed fine of USD 15'000 payable to FIFA in addition to the amount of USD 267'332.64 payable to the Respondent. The fine amounting to USD 15'000 is without any legal basis and thus unjustified and disproportionate. Furthermore, the Club is financially incapable to pay the outstanding amount to the Player in addition to this fine. Therefore, the fine would have to be lifted and the Appealed Decision would have to be annulled.

29. In light of the above, the Appellant submits the following requests for relief in its Appeal Brief:

"In Conclusion: We kindly request from CAS PANEL that as we have explained in detail above annulment of FIFA DRC decision dated on 08 October 2021 notified to the parties on 19 October 2021".

30. In its Reply to Respondent's Answer (see *infra*), the Appellant replies that "*the essence of the case and fine cannot be separated as the reason for fine is that FIFA DRC did not examine the fact and consider all conditions of the parties*" and that that there is no lack of standing to be sued in the present case.

B. The Position of the Respondent

31. The Respondent underlines that the Appellant in its Appeal Brief does not contest any factual or legal aspects of the Player's Claim and only challenges the USD 15'000 fine. According to the Respondent, the Appealed Decision as far as it concerns the overdue payable would thus not have been appealed within the relevant time-limit and would have a *res indicata* effect.

32. Moreover, the Appellant failed to provide any proof of its financial difficulties. However, even if it had provided proof, its financial difficulties would not excuse its failure to make the required payment, as established by CAS jurisprudence.

33. As a second line of arguments, the Respondent argues that the Appellant did not challenge any aspects of the horizontal dispute between the Player and the Club, but only addressed the issue regarding the fine imposed by FIFA. This, in turn, has two consequences: (1) The horizontal dispute between the Player and the Club became binding, since the Appellant failed to question the FIFA DRC decision regarding the Player's claims within the 21-day statute of limitations. (2) Since the appeal only addresses issues regarding the vertical dispute between the Club and FIFA in relation to the fine, the rightful respondent for the Appellant's claim is FIFA. Thus, only FIFA would have standing to be sued in the case at hand. As a consequence, the appeal cannot be upheld but has to be dismissed, because Appellant failed to sue the correct respondent.

34. He thus requests the CAS the following:

1. *Considering this response to the appeal brief to have been presented in due time and form.*
 2. *Considering that the appeal has been wrongfully interposed due to the player's lack of standing to be sued and the summoning of the wrong respondent to address the questioning of the fine imposed by FIFA.*
 3. *Considering, consequently, the inadmissibility of Malatya's appeal against the Decision issued by FIFA DRC Decision notified, with grounds, to the parties on 19 October 2021.*
 4. *Setting the costs of the present arbitration to be borne entirely by the appellant.*
 5. *Ordering the appellant to pay the Player a contribution of CHF 15,000 toward legal fees and other expenses incurred".*
35. In his Second Answer to the Appellant's Reply, the Respondent reiterates his position on his lack of standing to be sued in view of the scope of the present appeal. Furthermore, the Respondent stresses, that the Appellant has not substantiated its financial difficulties and that such difficulties would in any event not justify its failure to comply with its financial obligations.

V. JURISDICTION

36. Given that CAS has its seat in Switzerland and that when the purported arbitration agreement was executed neither the Appellant nor the Respondent had their respective seat in this country, this is an international arbitration procedure governed by Chapter 12 of the Swiss Private International Law Act ("PILA"), whose provisions are thus applicable. Article 186 (1) of the PILA states that the arbitral tribunal shall itself decide on its jurisdiction. This general principle of Kompetenz-Kompetenz is a mandatory provision of the *lex arbitri* and has been recognized by CAS for a long time (see e.g. CAS 2004/A/748).
37. Article R47 of the CAS Code provides as follows:
- "An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".*
38. Article 57 (1) of the FIFA Statutes (May 2021 edition) 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 receipt of the decision in question".*
39. Article 24 (2) RSTP reads – in its pertinent parts – as follows:
- "Decisions reached by the DCR or the DCR judge may be appealed before the Court of Arbitration for Sport (CAS)".*

40. As the Appealed Decision is issued by the DRC, the Sole Arbitrator is satisfied that, according to Article 57 (1) of the FIFA Statutes and Article 24 (2) RSTP, CAS has jurisdiction to hear this case and decide on the matter.
41. It is further undisputed between the Parties that CAS has jurisdiction to adjudicate the matter at hand, which the Parties have also confirmed by their signature of the Order of Procedure.

VI. ADMISSIBILITY

42. Article R49 of the CAS Code reads 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

43. According to Article 57 (1) of the FIFA Statutes, appeals *“shall be lodged with CAS within 21 days of notification of the decision in question”*.
44. According to Article R51 of the CAS Code, the appeal brief shall be filed *“within ten days following the expiry of the time limit for the appeal”*.
45. The grounds of the Appealed Decision were notified to the Parties on 19 October 2021, the Statement of Appeal was filed on 8 November 2021 and the Appeal Brief on 15 November 2021. The Sole Arbitrator thus notes that all requirements mentioned in the provision set out above are fulfilled. In particular, both the Statement of Appeal and the Appeal Brief were filed in a timely manner. The Appeal is therefore admissible.
46. The Sole Arbitrator further notes that, contrary to the Respondent’s allegations (cf. supra § 31), in its Statement of Appeal, the Appellant requested the cancellation of the whole Appealed Decision. The Sole Arbitrator thus considers that the Club has also timely appealed its obligation to pay to the Player an amount of USD 267’332.64 plus interests.
47. Finally, the Sole Arbitrator notes that, according to the CAS and the Swiss Federal Tribunal jurisprudence, standing to be sued is a question touching on the substance, as opposed to the admissibility of a claim (CAS 2017/A/5359; CAS 2013/A/3372; SFT 128 III 50). Consequently, the question whether the Respondent has standing to be sued will be answered at a later stage of the award and does not prevent this case to be admissible.

VII. APPLICABLE LAW

48. Article R58 of the CAS Code reads 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

49. According to Article 56 (2) of the FIFA Statutes, the provisions of the CAS Code shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and additionally, Swiss law.
50. The Sole Arbitrator therefore rules that the present dispute is to be solved according to the corresponding FIFA regulations, in particular the Regulations (given that the Player filed its claim on 13 July 2021, in its February 2021 edition), and that Swiss law shall be applied subsidiarily.

VIII. MERITS

51. It is undisputed that the Parties have signed an employment contract valid from 21 August 2020 until 31 May 2021, that the Contract stipulated that the Club will pay the Player a minimum rate of USD 450'000.00 NET for the 2020-2021 football season and additionally USD 6'000.00 for flight tickets and that the Club only paid a total amount of USD 188'666 to the Player.
52. In light of the above, of the Appealed Decision and of the parties' submissions, the following issues will be addressed in turn:
 - a) *The Respondent's standing to be sued*
 - b) *The Appellant's obligation to pay the fine imposed by FIFA*
 - c) *The Appellant's obligation to pay USD 267'332.64 to Respondent*

A. The Respondent's standing to be sued

1. Legal Background

53. Disputes adjudicated by FIFA bodies can be qualified as “horizontal” disputes where they involve two or more direct or indirect members of FIFA (such as clubs, players, or coaches) and did not involve FIFA's particular prerogatives or disciplinary powers and where FIFA has nothing directly at stake. In such context, and provided the relevant other conditions are met, a CAS panel will proceed to examine the appeal and adjudicate the dispute although FIFA was not summoned as respondent. Other decisions involving, for instance, the application of sporting sanctions, purely disciplinary issues, eligibility or registration matters fall within the “vertical” criteria. Disputes which hold both “vertical” and “horizontal” issues, *i.e.* a breach of contract case between a player and a club where the FIFA DRC renders a decision awarding compensation to a player and imposes sporting sanctions against a club (on this question, HAAS U., *Standing to appeal and standing to be sued*, in: BERNASCONI/RIGOZZI (eds), *International Sport Arbitration*, 6th Conference CAS & SAV/FSA, Weblaw, p. 53-88). The example holds a horizontal dispute between a player and the club relating to a breach of

contract and to the claimed compensation and a vertical dispute between FIFA and the club relating to the sporting sanctions (see, for instance, CAS 2016/A/4838 or CAS 2017/A/5359).

54. With regards to appeals against decisions rendered by a FIFA Body: Article 57 (1) of the FIFA Statutes (2021) contains that appeals against final decisions passed by FIFA's legal bodies shall be lodged with CAS. However, Article 57 (1) does not specify which party the appeal should be brought against, *i.e.* which party has standing to be sued. As held in CAS 2016/A/4838, and in analogy to Articles 75 of the Swiss Civil Code (SCC) and Article 706 of the Swiss Code of Obligations (SCO), challenges against decisions of associations that are vertical in nature, must be directed at the association itself¹. It follows that in an appeal against a sporting sanction imposed by a FIFA legal body, FIFA needs to be summoned, as only FIFA has standing to be sued (see, for instance, CAS 2016/A/4838, para. 117-118 with further references).

2. *The nature of the FIFA DRC Decision of 8 October 2021*

55. In the Appealed Decision, the DRC accepted the Respondent's claim in full and ordered the Appellant to pay USD 267'332.64 plus interests to the Respondent. This obligation was based on the Contract signed by the Parties on 21 August 2020. As this part of the decision solely relates to an obligation between the Club and the Player, it is of horizontal nature.
56. Additionally, the FIFA DRC imposed a fine in the amount of USD 15'000.00 on the Appellant. This fine was based on Article 12bis of the Regulations. As this fine is a sporting sanction and a purely disciplinary issue by the FIFA DRC against the Appellant, this part of the decision is of vertical nature.
57. It follows that the Appealed Decision is of both horizontal and vertical nature.

3. *The relief sought by the Appellant*

58. In both its Statement of Appeal and its Appeal Brief, the Appellant only lists Mr. Fernando Zuqui as the Respondent. At no point did the Appellant direct its appeal against FIFA as an additional Respondent. In its Reply, the Appellant simply stated: "*We believe that there is not any ground for lack of standing to be sued for the present case referenced above*".
59. However, in its Statement of Appeal, in its Appeal Brief and in its Reply, the Appellant asked the Sole Arbitrator to annul the Appealed Decision.
60. As to the part of the Appealed Decision dealing with the obligations between the Club and the Player, stemming from the Contract, the Respondent has standing to be sued, as the dispute is purely horizontal. It follows that the Appellant's claim in this regard will be dealt with hereafter.

¹ CAS 2016/A/4838, para. 117-118 with further references.

61. As to the part of the Appealed Decision imposing a sporting sanction in the form of a disciplinary fine in the amount of USD 15'000.00, the Respondent has no standing to be sued, as the dispute is purely vertical. It follows that the Appellant's claim in this regard must be dismissed.

B. The Appellant's obligation to pay the fine imposed by FIFA

62. In light of the above (*supra* para. 61 ff), the Sole Arbitrator does not need to review the Appellant's argumentation relating to the fairness and the proportionality of the imposed fine. Indeed, as the Player does not have standing to be sued on this issue, the appeal as far as it is directed against the imposed fine shall be dismissed for lack of standing to be sued and the imposed fine of USD 15'000 shall thus be confirmed.

C. The Appellant's obligation to pay USD 267'332.64 plus interests to the Respondent

63. The Parties have concluded an employment contract in the sense of Articles 319 *et seq.* SCO. Article 319 (1) SCO provides: "*By means of an individual employment contract, the employee undertakes to work in the service of the employer for a limited or unlimited period and the employer undertakes to pay him a salary based on the amount of time he works (time wage) or the tasks he performs (piece work)*".

64. The Parties agreed that the Player would play for the Club during the Football Season 2020-2021 for a minimum rate of USD 450'000.00 plus USD 6'000.00 for flight tickets.

65. Consequently and in application of the principle of *pacta sunt servanda*, the Appellant is in principle obliged to pay USD 450'000 plus USD 6'000 (total of USD 456'000) to the Respondent. The Appellant however only partly fulfilled its contractual obligation since it paid a total amount of USD 188'666 to the Respondent and an amount of USD 267'334 is thus still outstanding. Accordingly, the DRC considered that the amount of USD 267'332.64 that was claimed by the Respondent was due and ordered the Appellant to pay this amount with 5% interest per year.

66. In its Appeal Brief and in its Reply, the Appellant argues that in the Appealed Decision, the DRC failed to consider its economic difficulties. Furthermore, the Appellant submits that it was neither financially capable to pay the outstanding amount to the player, nor to pay the imposed fine of USD 15'000.

67. At no point did the Appellant submit any explanation let alone any evidence regarding its alleged financial difficulties. In any case, even if the Appellant had proven that its financial situation was dire, it would not have excused its failure to comply with its contractual obligations. It is a longstanding and well-known principle that financial difficulties to satisfy an obligation of payment do not excuse the failure to make the required payment (CAS 2018/A/5838, para. 95; CAS 2016/A/4402, para. 40; CAS 2006/A/1008, para. 19). Accordingly, the Appellant shall pay to the Respondent the outstanding amount of USD 267,332.64.

68. The Sole Arbitrator finally notes that the DRC awarded 5% interest p.a. as from the due dates and until effective payments. The Appellant did not contest the interest rate, which is further in line with the subsidiarily applicable Swiss law and shall thus also be confirmed.

D. Conclusions

69. In light of the above, the Sole Arbitrator concludes that the appeal filed by the Appellant against the Appealed Decision must be dismissed and that the Appealed Decision shall be confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Yeni Malatyaspor FK on 8 November 2021 against Mr. Fernando Zuqui is dismissed.
2. The decision of the FIFA Dispute Resolution Chamber of 8 October 2021 is confirmed.
3. (...).
4. (...).
5. All other or further requests or motions for relief are dismissed.