FIFA FOOTBALL TRIBUNAL

Decision of the Dispute Resolution Chamber

passed on 19 May 2022

regarding an employment-related dispute concerning the player Sara Björk Gunnarsdóttir

BY:

Frans de Weger (Netherlands), Chairperson
Angela Collins (Australia), member
Dana Mohamed Al-Noaimi (Qatar), member

CLAIMANT:

Sara Björk Gunnarsdóttir, Iceland
Represented by Ms Alexandra Gómez Bruinewoud and Mr Loïc Alves

RESPONDENT:

Olympique Lyonnais, France

I. Facts of the case

1. On 1 July 2020, the Icelandic player, Sara Björk Gunnarsdottír (hereinafter: the *Claimant* or the *Player*) and the French club, Olympique Lyonnais (hereinafter: the *Respondent* or the *Club*) concluded an employment agreement (hereinafter: the *Employment Agreement*) valid for two sporting seasons, *i.e.* as of 1 July 2020 until 30 June 2022.

2. In the preamble of the Employment Agreement, under the title *"nature du contrat"*, the Claimant and the Respondent (hereinafter: the *Parties*) agreed that:

"The present contract is concluded for a fixed term, in accordance with the provisions of articles L.222-2 to L.222-2-8 of the Sport Code and is in particular subject to the provisions of article L.222.2.3 and following of the Sport Code providing for the use of a fixed term contract, specific for any person having as a remunerated activity the exercise of a sporting activity in a legal subordination link with a sports association or a company mentioned in articles L.122.2 and L.122.12 of the Sport Code and this, in order to ensure the protection of the sportsmen and women and the fairness of the competitions.
The contract is governed by the Convention Collective Nationale du Sport. The Regulations on the Status of the Federal Female Player is also applicable." (free translation from French)

3. In Clauses 4.1 and 4.2 of the Employment Agreement, the Parties stipulated, *inter alia*, the following financial terms of the employment relationship:

- Season 2020/2021: a monthly salary of EUR 17,000;
- Season 2021/2022: a monthly salary of EUR 18,000;
- Monthly house allowance of EUR 1,000.

4. Clause 5.2 of the Employment Agreement entailed the following provision regarding social insurance:

"[The Respondent] *will ensure that* [the Claimant] *benefits from the general social security system for the entire duration of her employment.* [The Respondent] *undertakes for this purpose to make all necessary affiliations, declarations and payments of contributions provided that* [the Claimant] *provides* [the Respondent] *with the necessary documents for the realization of this commitment (in particular, the birth certificate for foreigners).*
The portion of the salary contributions payable by [the Claimant] *under the terms of the law, regulations or agreements in force, shall be deducted from any sums or benefits in kind*

that are considered to constitute remuneration and shall be and shall be paid by [the Respondent].
[The Respondent] *shall affiliate* [the Claimant] *to a complementary pension plan, namely Agira of the APICIL Group."* (free translation from French)

5. Furthermore, clause 6.13 of the Employment Agreement ruled on the applicable taxes: *"*[The Claimant] *agrees to pay directly to the relevant French authorities all taxes and duties of any kind that may be due as a result of the remuneration paid by* [the Respondent to the Claimant]*".* (free translation from French)

6. In clause 7.1 of the Employment Agreement the Parties agreed upon the following: *"*(...) *In the event of sick leave due to an accident at work or a professional illness, the* [Respondent] *undertakes to maintain the payment of the Player's full salary for a maximum period of 3 months".* (free translation from French)

7. In the course of the month March 2021, the Claimant verbally informed the Respondent of her pregnancy.

8. On 26 March 2021, the Claimant was prescribed *"avis d'arrêt de travail"* due to her pregnancy. (freely translated from French as "sick leave")

9. On 29 March 2021, the Parties participated in a video call. Therein, the Parties undisputedly agreed that the Claimant could return to her home country, Iceland.

10. On 30 March 2021, the Respondent filed for the social security allowance on behalf of the Claimant.

11. On 1 April 2021, the Claimant left for Iceland.

12. On 21 April 2021, the Claimant announced her pregnancy on social media.

13. On 22 April 2021, the Respondent congratulated the Claimant on her pregnancy through its official media channels.

14. On 30 April 2021, the French authorities (*Sécurité Sociale l'Assurance Maladie*) confirmed in a letter addressed to the Claimant that she was entitled to her social security allowance:

"*In accordance with your application of 30/03/2021 and the reason given in it, we inform you that you are authorized to leave your department as of 14/04/2021 to go to Iceland.*
However, we remind you that you must:
respect the hours of departure authorized by your doctor,
abstain from any unauthorized activity,
go to the convocations that will be sent to you by the medical control service of the country of stay and that will be sent to the address you will have given us.
Failure to comply with these provisions may result in the loss of your daily allowance." (free translation from French)

15. On 8 June 2021, the *Union National des Footballeurs Professionnels* (hereinafter: the *UNFP*) sent correspondence to the Respondent on behalf of the Claimant, inquiring as to the reason why the salary of the Claimant had not been paid in its entirety.

16. In the same correspondence, the UNFP also alleged that the newly established FIFA maternity regulations under the scope of the FIFA Regulations on the Status and Transfer of Players (hereinafter: the *Regulations*) applied and, consequently, the Claimant's full salary had to be paid during the pregnancy and until the beginning of the maternity leave. Furthermore, the UNFP underlined that even if French law was applied, the collective bargaining agreement (*i.e.* the *Convention Collective Nationale du Sport*, hereinafter: the *CCNS*) applicable to female players equally ensured a full remuneration for 90 days following the beginning of Claimant's leave.

17. The correspondence remained unanswered by the Respondent.

18. Around 20 June 2021, the agent of the Claimant met with the Respondent to discuss the reduced salary payments. It was allegedly agreed between the Parties that the agent would send all receipts of payments made so far and that the Respondent would revert with an explanation.

19. On 13 July 2021, the Claimant sent her first default notice to the Respondent, requesting the payment of EUR 44,828, corresponding to the remaining difference of monthly salaries as well as the housing allowance as from April 2021 to June 2021, within the next 10 days.

20. In its reply of 2 August 2021, the Respondent stated that the Claimant *"was immediately placed in sick leave as from the 26th of March 2021 to the 23rd of September 2021. Thus, as* [the Claimant's] *health did not allow her to practice any occupation,* [the Claimant] *told*

[the Respondent] *about her will to come back as soon as possible to Iceland to stay there for the rest of her pregnancy*".

21. The Respondent continued that, considering that the Claimant did not provide for sporting services nor any other alternate employment during her pregnancy until her maternity leave, the Claimant was subject to *"the rules regarding the sick leave compensation in accordance with* [the Respondent's] *company agreement on work time and the French legislation".*

22. In correspondence of 6 August 2021, the Claimant objected to the Respondent's interpretation of art. 18quater of the Regulations, arguing that her *"right to receive full remuneration during pregnancy, until* [the Claimant] *decides to utilise her maternity leave, is not subject to any condition"* and stressed that *"both* [her as well as the Respondent's] *medical practitioner, have confirmed that* [the Claimant] *could not continue to provide sporting services".*

23. In the same letter, the Claimant disputed that "*unlike what is suggested in* [Respondent's] *reply,* [the Claimant] *has not yet defined the commencement date of her maternity leave, date that she is entitled to independently determine".*

24. Furthermore, the Claimant indicated that the Respondent had never mentioned the possibility of continuing working in another way, but that she would make herself available to provide employment services:

"With regard to the possibility to provide employment services in an alternate manner as you mention in your letter, such a possibility does not constitute any prerequisite as incorrectly stated in your letter (it is indeed a right of the player). However, [the Respondent] *has in fact never previously referred to such option, let alone the complete absence of the formalisation of a plan for her alternate employment. In this respect,* [the Claimant] *would gladly make herself available to the club to provide employment services, for instance, in order to build a storytelling campaign about her journey as an elite athlete, in an elite club, starting a family".*

25. Finally, the Claimant requested the payment of EUR 63,828, corresponding to the remaining difference of monthly salaries as well as the housing allowance as from April to July 2021, within the next five days.

26. On 10 August 2021, the Respondent reiterated its position from its previous correspondence dated 2 August 2021, stressing that the Claimant "*specifically and immediately required from* [the Respondent] *to let her return to Iceland for the duration of her pregnancy to be close to her family relatives and handle the follow up of her pregnancy in Iceland"* and that it *"helped her out to realize all the administrative procedures as from March 30th, 2021 to enable her to be paid by the French social security of the daily allowances while leaving France for Iceland".*

27. Based on the evidence on file, the Claimant started her maternity leave as of 24 September 2021. This follows from the salary slip of September 2021 provided by the Respondent which remained uncontested by the Claimant.

II. Proceedings before FIFA

28. On 10 September 2021, the Claimant filed the claim at hand before FIFA.

29. On 15 September 2021, the claim was sent to the Respondent by FIFA, whereby it provided the Club with the opportunity to file its position.

30. On 5 October 2021, the Respondent filed its reply to the claim. In parallel, the Claimant submitted a new correspondence, and amended her claim.

31. On 7 October 2021, the submission phase of the procedure was closed by FIFA.

32. On 25 October 2021, the Claimant was invited by FIFA to comment on the allegedly received salaries, whilst the submission phase of the procedure remained closed.

33. On 4 November 20221, the Claimant submitted her comments, and additionally amended her claim for a second time.

34. On 8 November 2021, FIFA forwarded the Claimant's comments to the Respondent for information purposes only and, simultaneously, FIFA reiterated to the Parties that the submission phase of the procedure remained closed.

35. On 10 November 2021, FIFA sent a new correspondence to the Parties, in light of the fact that the Claimant had amended her claim. In doing so, FIFA invited the Respondent to submit its final comments, thus implicitly re-opening the submission phase of the procedure in order to warrant Respondent's right to be heard.

36. On 19 November 2021, the Respondent filed its second submission, whereby it, *inter alia*, and for the first time, objected to the competence of the Football Tribunal to hear the dispute.

37. On 4 January 2022, FIFA invited the Claimant to comment on the new arguments presented by the Respondent in its second submission, *i.e.* on the competence of FIFA.

38. On 14 January 2022, the Claimant's submission was received by FIFA.

39. On 2 May 2022, the submission phase of the procedure was definitively closed by FIFA.

40. A brief summary of the position of the Parties is detailed in continuation.

a. Position of the Claimant

41. In her claim of 10 September 2021, the Claimant requested outstanding payments in the amount of EUR 75,709.83, plus 5% interest *p.a.* as from the relevant due dates.

42. On 5 October 2021, the Claimant amended her claim, requesting the amount of EUR 90,155.5, whereas *"all other requests remain unchanged".*

43. On 4 November 2021, the Claimant amended her claim once again, finally requesting the amount of EUR 83,472.61, corresponding to the remaining difference of monthly salaries as well as the housing allowance as from April 2021 until September 2021.

44. The Claimant argued that whereas she was entitled to the amount of EUR 111,000 (EUR 17,000 x 3 months + EUR 18,000 x 3 months + EUR 1,000 x 6 months), she merely received the amount of EUR 27,427.39.

45. In support of her claim, the Claimant alleged that the Respondent *"has repeatedly refused to follow the FIFA* [Regulations]*"* as it "*has provided an inaccurate interpretation of Article 18quater for its own benefit".*

46. In this respect, the Claimant asserted that the matter at hand falls under art. 18quater par. 4 lit. b) of the Regulations since it was clearly established by her doctors that she *"was not in the position to continue providing sporting services".*

47. The Claimant further stated that under the said provision, *"the player has the possibility, the "right", to provide an alternative employment service",* however that such possibility *"does not constitute a prerequisite to continue receiving the payment of her full salary".*

48. In any event, the Claimant highlighted that it is the Respondent that *"has an express obligation to collaborate with the* [Claimant] *in order to elaborate a plan, out of good faith,*

for the [Claimant] *to continue rendering her services for the* [Respondent]*, all while taking into account the health of the* [Claimant] *and the baby".*

49. In this regard, the Claimant asserted that the Respondent *"never offered the* [Claimant] *an alternate job, and when the* [Claimant] proactively *suggested one, it failed to even reply to her request clearly showing a lack of genuine interest to retain the* [Claimant's] *services in an alternate fashion".*

50. What is more, the Claimant alleged that the Parties agreed that she could travel back to Iceland, taken into consideration the outburst of COVID-19 cases within the team and that the Respondent never *"display*[ed] *any opposition".*

51. At this point, the Claimant remarked that the Respondent *"failed to mention that they were planning to reduce her salary payments"* and added that *"it is not because the* [Claimant] *is in a different country that she cannot make herself available, whether in person or virtually".*

52. The Claimant asserted that *"the FIFA* [Regulations] *are clear and provide for full remuneration, unless more favourable conditions would apply under domestic rules."* In the matter at hand, *"the national dispositions are less favourable"* for the Claimant. As a consequence, the FIFA Regulations shall apply at the matter at hand.

53. The Claimant further noted that in line with the *"spirit"* of the Regulations*, "the pregnancy and maternity dispositions were implemented to protect female players in such pivotal and central moment of their lives not only as professional footballers but also as individuals".*

54. The Claimant alleged that by *"refus*[ing] *to follow the FIFA* [Regulations]*"* the Respondent *"discriminated"* against the Claimant. In this respect, the Claimant stressed that *"maternity should never constitute a source of discrimination in employment, including in that of receiving salaries"*, the latter being an *"essential step to ensuring gender equality".*

55. In the event that the FIFA DRC deems that the FIFA Regulations are not applicable in this case, the Claimant requested the amount of EUR 38,828, corresponding to the remaining difference of three monthly salaries of April 2021 until June 2021.

56. In this respect, the Claimant argued that instead of the amount of EUR 54,000 (EUR 17,000 x 3 months + EUR 1,000 x 3 months), she only received an amount of EUR 6,865.65, corresponding to the remaining difference of monthly salaries, as well as the housing allowance as from April 2021 until June 2021.

57. The Claimant based her request on the presumption that her Employment Agreement is also governed by French law under the CCNS.

58. The Claimant submitted that "[a]*ccording to Chapter 12 applicable to professional sport and women's football as stated also in article 2.2 of the "Statut de la Joueuse Fédérale", and in particular in article 12.10.2 of said CCNS, the employer has the obligation to ensure that the player receives her full salary for the first 90 days of stoppage, irrespective of the reason why the employee is not able to work after which the normal French social security regime applies".*

59. By non-compliance with the above, the Claimant alleged that the Respondent *"has surprisingly deviated from the abovementioned obligation in article 7.1 of the* [Employment Agreement] *by making the payment of the full salary dependant on the justification of the work stoppage. The CCNS supersedes such disposition which must thus be disregarded."*

b. Position of the Respondent

60. The Respondent requested the Football Tribunal to reject the claim of the Claimant.

61. First of all, the Respondent referred to the video call of 29 March 2021, and alleged that therein, the Claimant *"immediately expressed - in an urgent and insistent manner - her desire to return to Iceland as a matter of urgency and her firm intention to carry out her pregnancy in her native country in order to be monitored by an Icelandic speaking specialist. The* [Claimant] *also made it clear that she wanted to devote herself solely to her future baby and put all professional activities on hold. Faced with this unusual request, the* [Respondent] *did not wish to interfere with her personal decision, while alerting her to the administrative constraints to which she was exposing herself with regard to the French Social Security, which compensates employees during their sick leave by means of daily allowances".* (free translation from French)

62. In this regard, the Respondent submitted that according to article L160-7 of the French Social Security Code, the payment of daily allowances during sick leave is, in principle, conditional on the residence of the applicant in France. However, the social security may grant an exemption to employees who wish to take their sick leave in a country that is a member of the free trade agreement applicable within the European Union and the European Economic Area.

63. Thus, the Respondent asserted that it provided the Claimant with assistance in the administrative procedures with the French authorities, allowing the Claimant to travel to Iceland with the guarantee of receiving daily allowances from the French social security system (*cf.* Clause 7.1 of the Employment Agreement).

64. In view of the above, the Respondent alleged that contrary to what is implied by the Claimant, it did everything in its power to allow the Claimant to return to Iceland while benefiting from the social security allowance. The Respondent added that by doing so,

it indeed, *"demonstrat*[ed] *a sincere desire to listen to the* [Claimant] *and thus alleviate her mental burden during the crucial period of a woman's pregnancy: No international, European or French standard obliged the* [Respondent] *to accompany in all her steps. The* [Respondent] *was not obliged to accompany* [Claimant] *in any of her endeavors".*

65. With regard to the applicable law on the matter, the Respondent asserted that the Claimant's Employment Agreement is subject to French and European legal provisions, *i.e.* (i) by the French Labour Code and Social Security Code and (ii) by the CCNS, insofar as these standards guarantee the application of the provisions specific to the sporting environment, in particular the FIFA Regulations.

66. Furthermore, the Respondent alleged that European provisions on special compensation during maternity leave as well as the Regulations are only applicable to the maternity leave period defined as *"a minimum period of 14 weeks, of which a minimum of eight weeks must occur after the birth of a child."* Consequently, the Respondent concluded that the maternity leave at the matter at hand *"cannot occur before 24 September 2021".*

67. Thus, according to the Respondent, the relevant provisions for this case are regulated in art. 18quater par. 4 lit. a) and b) of the FIFA Regulations and concern the Claimant's rights during pregnancy if *"she had either continued her sports services or provided non-sports services for the club".*

68. However, given that the Claimant did not make any request concerning the possibility of continuing to carry out her services in an alternate matter, and in view of her insistence to return to Iceland as soon as possible to be near her relatives for the monitoring of her pregnancy, the prerequisites of art. 18quater par. 4 lit. a) and b) of the FIFA Regulations were clearly not fulfilled.

69. In application of French law, the Respondent submitted that *"the regulations on compensation for non-occupational sick leave for the period from March 2021 to 23 September 2021 were applied ",* namely, articles L323-1 of the French Social Security Code.

70. The Respondent alleged that said provisions provide for the payment of daily social security benefits capped at EUR 45,99 gross per day.

71. Furthermore, the Respondent argued that French law also provides *"to subscribe to group insurance coverage in order to provide additional benefits to the daily social security allowances in case of sickness".*

72. However, the Respondent continued, the French law "*leaves it to the provisions of the collective bargaining agreement to establish the conditions of eligibility for compensation*

for sick leave. In this context, a company collective agreement may provide for more favourable contractual provisions than the branch collective agreement, in this case the [CCNS], *concerning certain areas, including in particular sick pay".*

73. The Respondent further asserted that *"French law does not provide for any maintenance of the employee's seniority while on non-occupational sick leave"*, but *"the provisions of the collective agreement applicable to the* [Claimant] *provide for a minimum of one year's seniority in order to receive additional compensation from the employer in addition to the daily social security benefits".*

74. In this respect, the Respondent argued that in March 2021, the Claimant had not been with the Respondent for the period of one year and, consequently, she did not qualify for the employer's supplement.

75. In summary, the Respondent was of the opinion that the Claimant was compensated in accordance with the legal and contractual provisions provided for by French law and the collective agreement on working time applicable within the Club and that the Claimant rightfully received the daily social security benefits and the provident benefits subscribed by the Respondent in the event of sick leave for a period of absence exceeding 30 days as from April 2021.

76. With regard to the relevant period of maternity leave, the Respondent acknowledged that as of 24 September 2021 (*i.e.* the commencement of Claimant's the maternity leave), the FIFA Regulations shall apply, *i.e.* the Claimant's remuneration shall be maintained at 2/3 of her contractual remuneration as the FIFA Regulations are *"more favourable than the legal provisions in France".*

77. Finally, the Respondent strongly opposed to Claimant's allegation of discrimination and stressed that it has always been *"a strong supporter of women's rights and equal treatment of men and women in football".*

c. Second submission of the Claimant

78. The Claimant was requested by FIFA to provide additional comments on the alleged payments as submitted by the Respondent.

79. As a preliminary remark, the Claimant noted that the Respondent did not contest having failed to pay her full remuneration and acknowledged having only partially paid her throughout the respective period.

80. Furthermore, the Claimant added that "*it is also incorrect for the* [Respondent] *to state that the* [Claimant] *did not offer her alternate services while a clear offer was made by the latter and can be found on file. There is also no evidence that the* [Claimant] *said that she*

did not want to do anything for the Club while being pregnant and the [Respondent] *does not provide any explanation as to why it did not comply with the mandatory FIFA regulations".*

81. The Claimant equally noted that the Respondent did not provide any proof of effective payment whatsoever with regard to the table entitled "*Récapitulatif salaires et indemnisations sécurité sociale et prévoyance/congé maladie Mme Gunnarsdóttir*". In this respect, the Claimant submitted that none of the amounts referred to in said table correspond to a similar amount received on her account.

82. Regarding the alleged payments, the Claimant acknowledged to have received the following amounts:

- EUR 12,482.11 in April 2021, corresponding to the salary of March 2021 (which is not subject of the dispute);
- EUR 2,220.32 in May 2021;
- EUR 1,200.48 in June 2021;
- EUR 8,667.87 in July 2021;
- EUR 4,118.17 in August 2021;
- EUR 4,554.33 in September 2021
- EUR 6,666.22 in October 2021.

83. The Claimant submitted that for the period between April 2021 to September 2021, she received a total amount of EUR 27,427.39 as opposed to the amount of EUR 111,000 (EUR 17,000 x 3 months + EUR 18,000 x 3 months + EUR 1,000 x 6 months).

84. In view of the above, the Claimant amended the claimed amount of outstanding remuneration from EUR 75,709.83 to EUR 83,472.61.

d. Second submission of the Respondent

As to the Competence of FIFA

85. In its second submission, the Respondent contested the competence of FIFA.

86. First, by reference to art. 23 of the Procedural Rules Governing the Football Tribunal (hereinafter the *Procedural Rules*), the Respondent argued that since the submission phase had not been closed yet, it is not prevented to challenge the jurisdiction *"at this stage of the proceedings".*

87. Second, the Respondent purported that the "*conseil de prud'hommes*" has the exclusive jurisdiction to rule on the matter at hand.

88. In support of its allegations, the Respondent pointed out to the preamble of the Employment Agreement:

"The present contract is concluded for a fixed term, in accordance with the provisions of Articles L 222-2 to L 222-2-8 of the Sports Code and is subject in particular to the provisions of Article L 222.2.3 et seq. of the Sports Code (…)." (free translation from French)

89. The Respondent further asserted that article 222-2-1 of the French Sports Code provides the following:

"The Labour Code is applicable to salaried professional athletes and salaried professional trainers, except for the provisions of Articles L. 1221-2, L. 1241-1 through L. 1242-5, L. 1242-7 through L. 1242-9, L. 1242-12, L. 1242-13, L. 1242-17, L. 1243-7 through L. 1243-10, L. 1243-13 to L. 1245-1, L. 1246-1 and L. 1248-1 to L. 1248-11 relating to fixed-term employment contracts (…)*."* (free translation from French)

90. The Respondent further referred to article 1411-4 of the French Labour Code:

"The labour court shall have exclusive jurisdiction, regardless of the amount of the claim, to hear the disputes referred to in this chapter. Any agreement to the contrary is deemed unwritten (…)*."* (free translation from French)

91. In view of the above, the Respondent concluded that by agreeing that the Employment Agreement shall be governed by provisions of the Sports Code, including the reference to the Labour Code, the Parties *"have agreed that the Labour Court shall have exclusive jurisdiction to adjudicate any dispute arising out of the* [Employment Agreement]*"*.

92. At this point, the Respondent referred to the jurisprudence of the Dispute Resolution Chamber (hereinafter the *DRC*) and the Court of Arbitration for Sport (hereinafter the *CAS*). It argued that both, the DRC and the CAS, *"declined its jurisdiction in favour of the ordinary courts in cases where, by agreeing to an applicable law, the parties implicitly accept the exclusive jurisdiction of the ordinary courts".*

93. By reference to art. 22 of the Regulations, Swiss law, and the jurisprudence to the Swiss Federal Tribunal (STF 4A_244/2021), the Respondent argued that the Parties did not intend to exclude the jurisdiction of the ordinary courts. On the contrary, that the Parties have clearly agreed on exclusive jurisdiction of the Labour Court by referring to the applicable law.

94. The Respondent further emphasized "*that there is not a single reference in the contract to the DRC or any other arbitral institution".*

As to the constitution of the DRC Panel

95. As next argument, the Respondent pointed out that the *Fédération Internationale des Associations de Footballeurs Professionnels* (hereinafter the *FIFPRO*) is the Claimant's legal representative in this matter.

96. In this respect, the Respondent stressed that *"all players' representatives of the DRC are in fact appointed by FIFPRO".*

97. In view of the above and referring to the non-waivable red list of the International Bar Association Guidelines, the Respondent concluded that *"no player representative can be considered objectively independent and impartial in this case".*

98. As a consequence, the Respondent requested to submit this matter to a Single Judge of the DRC and not to a DRC Panel.

As to the interpretation of art. 18quater of the FIFA Regulations

99. In continuation, the Respondent reiterated its position on the interpretation of art. 18quarter par. 4 lit. b) of the FIFA Regulations when it argued that the conditions established therein are not met since the Claimant has not used her right to exercise another activity within the Club and specifically requested to return to Iceland.

100. The Respondent further alleged that its interpretation is also aligned with the intention of the legislator.

101. It further asserted that the during Claimant's sick leave, *i.e.* the period before her maternity leave, the Respondent guaranteed a compensation of more than 50% of Claimant's net monthly tax and social security pay.

102. In support of its argumentation, the Respondent compared the salaries of February 2021 (when the Claimant was providing services to the Respondent) and June 2021 (when the Claimant was on sick leave):

- **February 2021:** The Claimant allegedly received a net fiscal and social amount of EUR 12,435.11;
- **June 2021:** The Claimant allegedly received a net fiscal and social amount of EUR 6,865.65.

As to the calculation provided by the Claimant

103. With regard to the calculations provided by the Claimant, the Respondent alleged that the Claimant aims *"to obtain a level of remuneration higher than what it has been able to receive each month since the beginning of the execution of her* [Employment Agreement]*".*

104. In this respect, the Respondent pointed out that the Claimant's calculation consists of a difference between the gross amounts contractually agreed upon for the period of April through September 2021 and the net social and fiscal amounts received by the Claimant over the period from April to September 2021 in her bank account.

105. The Respondent asserted that the same rules concerning taxes and social deductions have been applied as of July 2020. Consequently, the Respondent added that the Claimant *"cannot claim not to be aware of* [their] *application".*

106. As a result, the Respondent purported that the Claimant's calculation is *"inconsistent, disproportionate and erroneous".*

107. The Respondent stipulated that for the period between July 2020 and March 2021, *"the average rate of withholding tax applied to the* [Claimant] *by the French tax authorities was on average 30%".*

108. In particular, the Respondent explained that *"the payslips show that for a gross monthly remuneration of EUR 20,000, the* [Claimant] *received a net fiscal and social amount of approximately EUR 12,500 after application of social security charges and withholding tax".*

109. In view of the above, the Respondent concluded that it is necessary to subtract 37,5% from the contractually agreed gross amount to obtain the net fiscal amount paid to the Claimant*, i.e. "12,500 x 100 / 20,000 = 62.5%, resulting in a reduction of 37.5%".*

110. Consequently, the Respondent calculated that the net salary of the Claimant for the relevant period from April 2021 until September 2021 amounts to EUR 69,375 (EUR 111,000 x 62.5 / 100 = EUR 69,375).

111. The Respondent concluded in view of the fact that the Claimant recognized to have received EUR 27,437.29, that the latter is, *quod non*, entitled to maximal difference of EUR 41,937.71 for the salaries of April 2021 until September 2021 (EUR 69,375 - EUR 27,437.29 = EUR 41,937.71).

112. At last, the Respondent noted that the claimed amount of EUR 83,472.61 would correspond to more than double the amount the Claimant is entitled to.

e. Final comments of the Claimant

113. Finally, the Claimant was requested by FIFA to comment on the contested competence of FIFA.

114. In her comments, the Claimant firstly disputed the admissibility of the Respondent's last submission. She argued that since the investigation phase has already been closed by FIFA, the Respondent was merely invited *to "submit its final position on the response of the Claimant"*, which *"related solely to clarifications in relation with the "alleged payments received".*

115. In view of the above, the Claimant argued that *"the Club's submissions largely exceed the scope of FIFA's request formulated in the letter of 10 November 2021".*

116. Therefore, the Claimant argued, the following parts of the Respondent's submissions shall be declared as inadmissible:

- *"Part 1 in its entirety relating to the alleged incompetence of the FIFA DRC.*
- *Part 2, subsections A and B relating to the Club's interpretation of article 18quater of the FIFA* [Regulations]*."*

117. In view of the above, the Claimant concluded that *"no challenge to the competence of the FIFA DRC has been timely raised and that consequently FIFA's jurisdiction must be deemed accepted by the parties".*

118. Subsidiarily, shall the submission be considered admissible, the Claimant rejected the Respondent's arguments based on the following:

Silence of the contract and diversity of *fora* according to the choice of law clause

119. The Claimant asserted that the Employment Agreement *"is completely silent as to the applicable jurisdiction"* and that the Respondent's literal interpretation *"is erroneous and flawed".*

120. The Claimant added that the disposition the Respondent wishes to rely on is not a jurisdiction clause. She continued that the relevant clause merely *"clarifies the use and nature of the employment contract and constitutes simply a choice of law clause".*

121. Therefore, contrary to Respondent's allegations, *"there is no exclusive and specific choice of jurisdiction. Instead, there is a list of applicable laws and regulations, e.g. French Sports CBA, Regulations on the Status of the Federal Female Players and the statutes and regulations of the FA".*

122. Following the reasoning of the Respondent, the Claimant noted that *"at least two other jurisdictions could be identified", i.e.* the Players' Status Commission of the French Football Federation (hereinafter: the *FFF*) and the appropriate bodies of FIFA.

123. In this respect, the Claimant pointed out that *"the jurisdiction of the FIFA DRC can also be found by applying an even more straight forward interpretation than the one proposed by the Club since the competence of the FIFA DRC directly in the FA's General Regulations".*

124. Finally, the Claimant was of the opinion that *"to reach the conclusion that French labour courts would have jurisdiction as proposed by the Club, it is necessary to first read articles 222-2 to 222-2-8 of the French Sports Code, none of which actually mention any jurisdiction clause, but one contains a general reference to the French Labour Code, in which, among roughly ten thousand articles, one refers to French labour courts".*

125. In view of the above, the Claimant concluded that the FIFA DRC is competent to deal with the dispute since the Employment Agreement does not contains a *"written, explicit and/or exclusive jurisdiction clause".*

Irrelevance of the proposed jurisprudence

126. The Claimant further argued that the analogy made by the Respondent concerning the Spanish Royal Decree 1006/1985 cannot apply *"as the contractual dispositions were clearer and more direct as they explicitly set forth the direct applicability of the Spanish Royal Decree 1006/1985, which contains an exclusive jurisdiction clause in favour of Spanish labour courts, in all matters not regulated by the contract itself".*

127. With regard to Respondent's reference to the cases of the Swiss Federal Tribunal, the Claimant asserted that the decisions *"deal with another different situation, namely the existence of two contradictory jurisdiction clauses, one in favour of CAS, one in favour of Swiss labour courts".*

128. Contrary to the cases presented by the Respondent, the Claimant stressed again that there is no such clause in the Employment Agreement at the matter at hand. She added that "[i]*nstead, diverse textual references coexist without any specification as to their hierarchy and specific functions, causing confusion and breaching the right to legal certainty that the employee is entitled to expect for such an essential element of the employment relationship".*

129. The Claimant further referred to the decision of FIFA DRC of 10 August 2018, reading as follows:

"In continuation, as to the second argument of Respondent II, i.e. the alleged exclusive jurisdiction of civil courts of Country B on the basis of clause XII.2 of the contract, the

Chamber pointed out that such clause is clearly not a jurisdiction clause, but rather a choice of law clause. Furthermore, said clause, while referring to the legislation in force in Country B, also specifically refers to the regulatory framework of the Football Federation of Country B. Consequently, the DRC concluded that the contract neither provides for the exclusive application of the law of Country B for the settlement of disputes arising out of the contract, nor the exclusive jurisdiction of the courts of Country B". (emphasis added)

130. The Claimant continued by referring to CAS Award 2014/A/3690 at par. 107, stating that even if alternative *fora* would be set forth in an employment agreement, *"the choice of forum pertain*[s] *to the party starting the litigation against the other".*

131. In view of the above, the Claimant concluded that *"not only is the choice of fora less obvious, but additionally the player even decided to lodge a claim with the FIFA DRC".*

Additional comments and conclusion

132. The Claimant further underlined that the Employment Agreement had been drafted by the Respondent, and, therefore, any lack of clarity shall be interpreted *contra proferentem*.

133. Finally, pointing out to the newly adopted provisions for female players pertinent at the matter at hand, the Claimant was of the opinion that, in any event, *"the forum of the FIFA DRC shall be favoured to make sure that all actors within the football community can rely on the established standards"*, in particular in a dispute of an international dimension.

III. Considerations of the Dispute Resolution Chamber

a. Admissibility of submissions provided by the Parties during the proceedings

134. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) took into account the arguments of the Parties regarding the status of the submission phase, and therewith related allegations concerning the inadmissibility of the Respondent's submission of 19 November 2021.

135. In this respect, the DRC took note that the present matter was presented to FIFA on 10 September 2021 and submitted for decision on 19 May 2022. Taking into account the wording of art. 34 of the October 2021 edition of the Procedural Rules Governing the Football Tribunal (hereinafter the *Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

136. The Chamber continued by recalling the general timeline of the case before FIFA:

Date	Status of the Case
10 September 2021	Claim received by FIFA (assessment phase)
15 September 2021	Claim sent to Respondent by FIFA
5 October 2021	Reply received by FIFA Claimant amended her Claim
7 October 2021	Submission-phase closed by FIFA Reply sent to the Claimant for information
25 October 2021	Claimant is invited to comment on salaries received as alleged by the Respondent in its reply Submission-phase remained closed (art. 23 par. 2 of the Procedural Rules)
4 November 2021	Claimant submitted her comments and amended her claim once again
8 November 2021	FIFA reiterated that the submission phase was closed Claimant's comments sent to the Respondent for information
10 November 2021	FIFA invited the Respondent to file additional submissions since the Claimant amended the request for relief (*cf.* art. 23 par. 1 of the Procedural Rules)
19 November 2021	Second submission received by FIFA
4 January 2022	Claimant is invited to comment on the new argument presented by the Respondent in its second submission, *i.e.* the competence of FIFA
14 January 2022	Claimant's comments received by FIFA
2 May 2022	Investigation officially closed by FIFA Submission letter sent to the Parties

137. Based on the table above, the DRC observed that whereas FIFA closed the submission phase of the matter on 7 October 2021 and merely requested Claimant's comments with regard to the alleged payments, the Claimant did, in fact, amend her claim on 4 November 2021.

138. Nonetheless, in line with art. 23 par. 1 of the Procedural Rules, after the closure of the submission phase, *"the parties may not supplement or amend their submissions or requests for relief"*.

139. The DRC was mindful of the fact that, for the reasons of procedural economy, FIFA implicitly re-opened the investigation on 10 November 2021, when it invited the Respondent to submit its final position on the amended claim of the Claimant.

140. In view of the above, the DRC decided to consider the submission of the Respondent received on 19 November 2021 in the proceedings at the matter at hand.

141. For the sake of completeness, and under the circumstances, the DRC underlined that the Claimant was invited to comment on the new argument presented by the Respondent and that, consequently, the Parties were treated equally throughout the process and were each afforded the right to be heard.

b. Competence and applicable legal framework

142. The Chamber continued by analysing whether it was competent to deal with the case at hand.

143. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (March 2022 edition), the Dispute Resolution Chamber is, in principle, competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Icelandic player and a French club.

144. Nonetheless, the Chamber then turned its attention to the arguments of the Respondent that a French labour court is the competent forum to deal with the dispute.

145. In this respect, the DRC recalled the wording of art. 22 par. 1 of the Regulations, which, without prejudice to the above, allows the Parties *"to seek redress before a civil court for employment-related disputes".*

146. With the aforementioned in mind, the Chamber acknowledged that its task was to analyse if the Claimant has accepted the jurisdiction of French labour courts, as an exception to FIFA's jurisdiction, over any dispute possibly arising from her relationship with the Club.

147. In this respect, the Chamber noted that the contract at the basis of the dispute did not contain any jurisdiction clause in favour of the respective labour court. At the same time, the Chamber recalled the Respondent's arguments that by stipulating the governing provisions of the Employment Agreement, *i.e.* the Sports Code and its reference to the Labour Code, the Parties *"have agreed that the Labour Court shall have exclusive jurisdiction to adjudicate any dispute arising out of the* [Employment Agreement]".

148. Nonetheless, after a due analysis of the respective Employment Agreement, the DRC established that it refers not only to the application of French state law, but also to the application of the CCNS and the regulatory framework of the FFF.

149. At this point, the DRC underlined that the CCNS and the regulations of FFF equally foresee multiple potential *fora*, where the Parties may submit their dispute, *i.e.* the Players Status Commission of the French Football Federation and the appropriate bodies of FIFA.

150. In this context, the Chamber recalled its long-standing jurisprudence that a choice of jurisdiction by means of which the parties agree to decline the competence of FIFA must be clear, exclusive and unequivocal.

151. After analysing the contract at the basis of the dispute, the DRC was of the opinion that it cannot be established with sufficient clarity which of the referred decision-making bodies named in the Employment Agreement, if any, would be exclusively competent to hear the present dispute, to the detriment of the DRC.

152. Furthermore, the Chamber emphasised that the proof of this inconsistency is also the current dispute, in which both Parties consider a different body to have jurisdiction over the matter. What is more, the DRC underlined that the Respondent raised the argument regarding the competence in the second round of submissions only, which further confirms the lack of clarity entailed in the Employment Agreement.

153. In view of the above, the Chamber concluded that the alleged choice of jurisdiction does not reflect the Parties' unequivocal intention to refer the matter to the French labour courts and not to other bodies.

154. Finally, for the sake of completeness, the DRC referred to the legal principle of *venire contra factum proprium* and pointed out that by failing to object against the jurisdiction within the first round of submissions, the Respondent induced legitimate expectations on the Claimant and FIFA that it accepted the jurisdiction of the DRC.

155. By referring to art. 22 of the Procedural Rules, the DRC believed the above-mentioned argument is further strengthened by the fact that FIFA procedures are usually dealt with in one round of submissions and the second round is foreseen only for exceptional cases where the FIFA general secretariat deems it necessary.

156. Being aware of the applicable regulatory framework before FIFA, the DRC remarked that the Respondent should have presented all relevant arguments in its first submission, especially an argument of such preliminary importance.

157. As a result of all the above, the Chamber established that the Respondent's objection towards the competence of FIFA to deal with the present matter must be rejected, and FIFA is competent, on the basis of art. 22 par. 1 lit. b) of the Regulations, to consider the present matter as to the substance.

158. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (March 2022 edition) and considering that the present claim was lodged on 10 September 2021, the August 2021 edition of said Regulations is applicable to the matter at hand as to the substance.

c. As to the adjudication of the matter by the DRC

159. The Chamber then turned its attention to the Respondent's request to submit the present matter to a Single Judge and not to a DRC panel due to an alleged conflict of interest.

160. The DRC acknowledged the arguments of the Respondent concerning the composition of the panel, namely that *"no player representative can be considered objectively independent and impartial in this case"* considering that members of FIFPRO are acting as legal representatives of the Claimant.

161. In this respect, the DRC however noted that the objection of the Respondent was of generic nature only and that no specific challenge was raised after indication of Ms Collins as a panel member (*cf.* art. 5 par. 3 of the Procedural Rules).

162. Finally, recalling art. 24 par. 1 lit. b) of the Procedural Rules, and considering the legal complexity of the current matter, the Chamber concluded that the case is suitable to be decided by a panel of three judges.

d. Burden of proof

163. The Chamber then recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the Parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

e. Merits of the dispute

164. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber emphasised that in the following

considerations it will refer only to the facts, arguments and documentary evidence which it considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

165. Having established the foregoing, the Chamber moved to the substance of the matter, and took note of the fact that the dispute concerns the application of the newly adopted provisions under the Regulations relating to female players.

166. In particular, the Chamber acknowledged that the heart of the dispute lies in the application and interpretation of art. 18quater par. 4 lit. a) and lit. b) of the Regulations, concerning the player's entitlement to remuneration during her pregnancy.

167. Considering the novelty of the above-mentioned provision, the DRC wished to first recall its exact wording:

"4. Where a player becomes pregnant, she has the right, during the term of her contract, to:

a) continue providing sporting services to her club (i.e. playing and training), following confirmation from her treating practitioner and an independent medical professional (chosen by consensus between the player and her club) that it is safe for her to do so. In such cases, her club has an obligation to respect the decision and formalise a plan for her continued sporting participation in a safe manner, prioritising her health and that of the unborn child

b) provide employment services to her club in an alternate manner, should her treating practitioner deem that it is not safe for her to continue sporting services, or should she choose not to exercise her right to continue providing sporting services. In such cases, her club has an obligation to respect the decision and work with the player to formalise a plan for her alternate employment. The player shall be entitled to receive her full remuneration, until such time that she utilises maternity leave; (...)*."*

168. In this respect, the DRC wished to remark that such provision was envisaged considering the specificity of the footballer profession, in particular, that its nature *per se* encompasses a certain limitation for pregnant players to continue to provide their services. In this respect, the Chamber then recalled FIFA Circular No. 1772 of 8 October 2020, and pointed out that the International Labour Organization Convention No. 183 (the so-called *Maternity Protection Convention*) was duly considered in the process which was concluded with the amendments to the Regulations and its article 18quater.

169. Based on these considerations, the Chamber acknowledged that the maternity provision – in general – enshrine the duty of care of the employer with the main objective to provide protection for the pregnancy of a player.

170. With the above-mentioned in mind, the Chamber wished to briefly summarize the main facts of the case in chronological order.

171. The DRC started by acknowledging that the current dispute concerns a Player who agreed, together with her Club, to return to her home country during her pregnancy. It followed that the Parties to this particular dispute acknowledged that the Claimant would not provide sporting services during her pregnancy.

172. The DRC further emphasised that whereas the arrangement of the Player's return to her home country was agreed and established in a conference call on 29 March 2021, the Parties disputed if the financial consequences following the Player's leave to Iceland were discussed.

173. Irrespective of the above, the Chamber acknowledged that the Club filed for the social security allowance on behalf of the Player, amounting to EUR 45,99 per day (gross). Furthermore, the DRC noted that the Club also made certain payments of "*reinstatement of daily benefits*", amounting to EUR 214.20 per day (gross).

174. The Chamber then recalled that whereas the Player inquired as to the reasons why her salary has not been paid in its entirety, the Club failed to reply to her requests. The Chamber acknowledged that finally the Player sent a default notice, requesting the remaining difference of her salaries between April 2021 and June 2021.

175. In this context, the DRC took note of the first written answer of the Club on 2 August 2021, informing the Player that since she did not provide sporting services nor any other alternate employment during her pregnancy as foreseen in the FIFA Regulations, she was subject to *"the rules regarding the sick leave compensation in accordance with* [Club's] *agreement on work time and the French legislation".*

176. The Chamber equally acknowledged the reply of the Player on 6 August 2021, pointing out that the Club had never mentioned the possibility of the Player continuing to work in an alternate way. The Chamber further highlighted that at this point, the Player – for the first time since leaving France – offered to provide employment services in an alternate manner, however, that the said offer remained unanswered by the Club.

177. Shortly after, the Player initiated the proceedings before FIFA, requesting the amount of EUR 83,472.61 for the allegedly outstanding salaries during the months of April 2021 until September 2021.

178. After recollecting the main facts of the case, the DRC acknowledged that its task was to establish if, for the time during her absence, the Player is entitled to receive her full remuneration as provided in the Employment Agreement.

179. Having said that, the DRC turned its attention to the main arguments of the Parties as to the application of the maternity provisions under the Regulations.

180. The DRC started by acknowledging the position of the Claimant and her interpretation of art. 18quater par. 4 lit. b) of the Regulations. In this respect, the DRC noted that the Claimant alleged that she had the *"right to provide an alternative employment services"* and was of the opinion that such possibility *"does not constitute a prerequisite to continue receiving the payment of her full salary"*.

181. The Chamber equally perceived the Claimant's arguments that it was the Respondent, who *"ha*[d] *an express obligation to collaborate with the* [Claimant] *in order to elaborate a plan, out of good faith, for the* [Claimant] *to continue rendering her services for the* [Respondent]*, all while taking into account the health of the* [Claimant] *and the baby"*.

182. Conversely, the Chamber acknowledged the position of the Respondent, asserting that the relevant provision art. 18quater par. 4 lit. b) of the Regulations concerns the Claimant's rights during pregnancy if she had indeed *"provided non-sports services for the club"*.

183. In this respect, the Chamber took note of the Respondent's argumentation that the prerequisites of art. 18quater par. 4 lit. b) of the Regulations were clearly not fulfilled in the present matter since the Claimant did not make any request concerning the possibility of continuing to carry out her services in an alternate matter, and, consequently, she cannot be entitled to her full remuneration.

184. The Chamber turned to the specificities of the case, in particular, that the Claimant was prescribed *"avis d'arrêt de travail"* due to her pregnancy, with the Parties acknowledging that the Claimant would not make use of her prerogative to provide for sporting services within the meaning of art. 18quater par. 4 lit. a) of the Regulations.

185. In this context and considering the literal wording art. 18quater par. 4 lit. a) of the Regulations, the DRC concluded that this provision is not applicable in the matter at hand and turned its attention to the pertinent art. 18quater par. 4 lit. b) of the Regulations concerning the alternate employment services.

186. In this respect, the Chamber observed that it remained undisputed by the Parties that the Claimant did not provide any alternate services during her pregnancy.

187. Irrespective of the above, the DRC turned its attention to the specific circumstances of the case, in particular, that the Claimant actively requested clarifications, amongst others by means of her letters of 8 June, 13 July and 6 August 2021, regarding the payments of her salaries. In this regard, the Chamber highlighted that such correspondence remained unattended by the Respondent for several weeks. What is

more, the DRC stressed that eventually, by means of her letter of 6 August 2021, the Claimant also made herself available for alternate services.

188. In this respect, the DRC pointed to the wording of art. 18quater par. 4 lit. b) of the Regulations which specifies that *"should* [the player's] *treating practitioner deem that it is not safe for her to continue providing sporting services, or should* [the player] *choose not to exercise her right to continue providing sporting services. In such cases, her club has an obligation to respect the decision and work with the player to formalise a plan for her alternate employment"*.

189. At this point, bearing in mind the relationship between the employee and the employer, and the duty of care of the latter, the DRC strongly believed that the Respondent had the obligation to transparently clarify the consequences it deemed resulted from the Claimant's departure, in particular, the financial impact on the Claimant's salaries in case she chose not to provide alternate services.

190. In connection thereto, the DRC was of the opinion that it follows from the above-mentioned duty of care that it is, in general, the Club, as the employer, which has the responsibility to offer an alternate employment to the Player.

191. Being mindful of the respective provision as well as the specificities of the case, the DRC concluded that the Respondent failed to address any possibilities regarding the Claimant's alternative employment during her pregnancy, all the more so because the Player made herself available for alternate services by means of her letter of 6 August 2021, as set out above.

192. Finally, the DRC wished to remark that it duly considered the fact that the Respondent was supportive of the Player's absence as well as that a prudent person placed into the situation of the Player would have addressed the consequences resulting from her departure and that such minimum could have been expected from her, the DRC emphasised that the Respondent carried a heavier duty of care.

193. As a result of the above, the DRC concluded that the Respondent shall renumerate the Claimant fully as of 1 April 2021 until the commencement of her maternity leave, whereas during her maternity leave the Claimant shall be entitled to two thirds of the contractual salary in line with art. 18 par. 7 of the Regulations.

ii. Calculation

194. Having stated the above, the members of the Chamber turned their attention to the calculation of the financial obligations deemed as outstanding in the present case.

195. First of all, the Chamber noted that the Claimant was contractually entitled to the following amounts:

- April 2021: EUR 17,000 plus EUR 1,000 for house allowance, *i.e.* EUR 18,000;
- May 2021: EUR 17,000 plus EUR 1,000 for house allowance, *i.e.* EUR 18,000;
- June 2021: EUR 17,000 plus EUR 1,000 for house allowance, *i.e.* EUR 18,000;
- July 2021: EUR 18,000 plus EUR 1,000 for house allowance, *i.e.* EUR 19,000;
- August 2021: EUR 18,000 plus EUR 1,000 for house allowance, *i.e.* EUR 19,000;
- September 2021: EUR 18,000 plus EUR 1,000 for house allowance, *i.e.* EUR 19,000.

196. At the same time, the Chamber recalled that the Claimant acknowledged to have received certain amounts, which can be divided into three categories:

a) Payments made by CPAM Rhone, *i.e.* social security allowance
   - Claimant's entitlement to EUR 45,99 per day (gross).

b) *"Réintégration indemnités journalières prévoyance"*, *i.e.* reinstatement of daily benefits:
   - a contribution received by the employer in case the employee is on sick leave;
   - this contribution is consequently paid out by the employer to the employee;
   - Claimant's entitlement to EUR 214.20 per day (gross).

c) *"Indemnisation maternité"*, *i.e.* maternity compensation
   - Two thirds of the contractual salary in line with art. 18 par. 7 of the Regulations.

197. Based on the evidence provided by both Parties, the Chamber proceeded to summarize and allocate the amounts acknowledged by the Claimant as paid:

	Payments made by CPAM Rhone	**Payments made by the Respondent**	**Allocation of payments**	**Total amounts received (as acknowledged by the Claimant)**
Amounts received in the month of May 2021	EUR 2,220.32 (net)	-	Social security allowance - EUR 1,405.03 corresponding to 29/03-31/03 and 1/04-30/04 - EUR 128.73 corresponding to 1/05-3/05 - EUR 85.82 corresponding to 4/05-5/05	EUR 2,220.32 (net)

			- EUR 600.74 corresponding to 6/05-19/05	
Amounts received in the month of June 2021	EUR 1,200.48 (net)	**-**	Social security allowance - EUR 599,74 corresponding to 20/05-02/06 - EUR 600,74 corresponding to 03/06-16/06	EUR 1,200.48 (net)
Amounts received in the month of July 2021	EUR 1,802.22 (net)	EUR 6,865.65 (net)	Social security allowance - EUR 600,74 corresponding to 17/06-30/06 (net) - EUR 600,74 corresponding to 1/07-14/07 (net) - EUR 600,74 corresponding to 15/07-28/07 (net) Reinstatement of daily benefits - EUR 6,865.65 corresponding to 24/04-16/06 (net)	EUR 8,667.87 (net)
Amounts received in the month of August 2021	EUR 600,74 (net)	EUR 3,517.43 (net)	Social security allowance - EUR 600,74 corresponding to 29/07-11/08 (net) - EUR 600,74 corresponding	EUR 4,118.17 (net)

			to 12/08-25/08 (net) <u>Reinstatement of daily benefits</u> - EUR 3,517.43 corresponding to 17/06-30/06 (net)	
Amounts received in the month of September 2021	EUR 1,201.48 (net)	EUR 3,352.85 (net)	<u>Social security allowance</u> - EUR 600,74 corresponding to 26/08-08/09 (net) - EUR 600,74 corresponding to 09/09-22/09 (net) <u>Reinstatement of daily benefits</u> - EUR 3,352.85 corresponding to 1/07-28/07 (net)	EUR 4,554.33 (net)
Amounts received in the month of October 2021		EUR 6,666.22 (net)	<u>Reinstatement of daily benefits</u> - EUR N/A corresponding to 29/07-25/08 (net) Maternity compensation - EUR N/A corresponding to 24/09-30/09 (net)	EUR 6,666.22 (net)
	EUR 7,025.24	**EUR 20,402.15**		**TOTAL EUR 27,427.39**

198. Equally, the members of the Chamber turned their attention to the calculation of the Respondent as to the amounts that should have been allegedly received by the Claimant (*e.g.* social security allowance plus reinstatement of daily benefits).

RECAPITULATIF SALAIRES ET INDEMNISATIONS SECURITE SOCIALE ET PREVOYANCE / CONGE MALADIE MME GUNNARSDOTTIR

	Total Brut Paie	INDEMNITES JOURNALIERES SECURITE SOCIALE DIRECTEMENT VERSEES A MME GUNNARSDOTTIR						DONT INDEMNITES JOURNALIERES PREVOYANCE PAYEES AU CLUB PUIS REVERSEES A MME GUNNARSDOTTIR AU TRAVERS DES BULLETINS DE SALAIRE		
		BRUT			NET			NET		
		Jour	Nb j/ mois	Total	Jour	Nb j/ mois	Total	Jour	Nb j/ mois	Total
Du 01/03 au 31/03/21	20 000,00 €	45,99 €	3	137,97 €	42,91 €	3	128,73 €	214,20 €	0	- €
Du 01/04 au 30/04/21	4 000,00 €	45,99 €	30	1 379,70 €	42,91 €	30	1 287,30 €	214,20 €	6	1 285,20 €
Du 01/05 au 31/05/21	- €	45,99 €	31	1 425,69 €	42,91 €	31	1 330,21 €	214,20 €	31	6 640,20 €
Du 01/06 au 30/06/21	6 652,60 €	45,99 €	30	1 379,70 €	42,91 €	30	1 287,30 €	214,20 €	30	6 426,00 €
Du 01/07 au 31/07/21	3 808,29 €	45,99 €	31	1 425,69 €	42,91 €	31	1 330,21 €	214,20 €	31	6 640,20 €
Du 01/08 au 31/08/21	3 093,69 €	45,99 €	31	1 425,69 €	42,91 €	31	1 330,21 €	214,20 €	31	6 640,20 €
Du 01/09 au 23/09/21	5 893,69 €	45,99 €	23	1 057,77 €	42,91 €	23	986,93 €	214,20 €	22	4 712,40 €
	35 448,27 €			8 232,21 €			7 680,89 €			32 344,20 €

reçu le 01/10 les IJ prévoyance du 26/08 au 31/08 > règlement à venir

reçu le 01/10 les IJ prévoyance du 01/09 au 22/09 > règlement à venir

199. Nonetheless, when the Chamber compared the calculation of the Respondent with the effectively received amounts projected in the table "*Payments acknowledged by the Claimant*", the DRC noted that the respective numbers do not correspond.

200. Recalling the basic principle of burden of proof, the DRC concluded that it was for the Respondent to demonstrate that it had honoured its contractual obligations to the Claimant. In the DRC's view, however, the Respondent not only failed to provide clear evidence as to which payments have been effectively made to the Claimant, which duty lies with the Respondent, but that it also failed to duly allocate the respective amounts as well as to clearly distinguish between gross and net amounts.

201. In view of the above, the DRC determined to calculate the outstanding amounts as follows: the contractually stipulated salaries, including 7 days of maternity leave, minus the payments acknowledged by the Claimant.

202. Taking into account that the respective contractually stipulated salaries, including the maternity leave, amounted to EUR 109,522.21 and the payments acknowledged by the Claimant amounted to EUR 27,427.39, the Chamber observed that the financial obligations deemed as outstanding in the present case correspond to EUR 82,094.82 (EUR 109,522.21 minus EUR 27,427.39).

iii. Consequences

203. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay to the Claimant the amounts claimed as outstanding under the contract, in total EUR 82,094.82, as detailed above.

204. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the Chamber award the interest of 5% *p.a.* as

of the date of claim, *i.e.* as from 10 September 2021 until the date of the effective payment. The DRC highlighted that because it was not possible to properly allocate each (missed) payment *via-à-vis* its corresponding due date based on documentation provided by the Parties, it was equally not possible to award interest in the manner requested by the Claimant.

iv. Compliance with monetary decisions

205. Finally, taking into account the applicable Regulations, the Chamber referred to art. 24 par. 1 and 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.

206. In this regard, the DRC highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.

207. Therefore, bearing in mind the above, the DRC decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.

208. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.

209. 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 art. 24 par. 8 of the Regulations.

f. Costs

210. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent".* Accordingly, the Chamber decided that no procedural costs were to be imposed on the Parties.

211. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

212. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the Parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Sara Björk Gunnarsdóttir, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, Olympique Lyonnais, has to pay to the Claimant, the following amount:

   - EUR 82,094.82 as outstanding remuneration, plus 5% interest *p.a.* as from 10 September 2021 until the date of effective payment.

4. Any further claims of the Claimant are rejected.

5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.

6. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (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.

7. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.

8. This decision is rendered without costs.

For the Football Tribunal:

Emilio García Silvero
Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules).

CONTACT INFORMATION

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