Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 7 June 2018,

in the following composition:

Geoff Thompson (England), Chairman
Roy Vermeer (the Netherlands), member
Jon Newman (USA), member
Wouter Lambrecht (Belgium), member
Pavel Pivovarov (Russia), member

on the claim presented by the player,

Player A, Country B

as *Claimant*

against the club,

Club C, Country D

as *Respondent*

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. According to the Player of Country B, Player A (hereinafter: *the Claimant*), he and the Club of Country D, Club C (hereinafter: *the Respondent*), signed an employment contract (hereinafter referred to as: *the alleged contract*) on 8 June 2017, valid as from 1 July 2017 until 30 June 2020.

2. According to the Claimant, the content of the alleged contract was identical to that of the *"Agreement on Professional Football Playing"* (hereinafter: *the alleged agreement*) which was allegedly sent via e-mail on 6 June 2017 to his agent, Agent E, by the Respondent's representative, Representative F.

3. In this respect, the Claimant submitted, *inter alia*, the following documentation:

   a. an exchange of e-mails, dated 23, 26 and 29 May 2017, between Agent E and Representative F concerning negotiations about the financial terms of a possible engagement of the Claimant with the Respondent;

   b. an unsigned copy of the alleged agreement, dated 7 June 2017, allegedly sent on 6 June 2017 via e-mail by Representative F to Agent E, which document indicates, *inter alia*, the Claimant and the Respondent as parties, a duration as from 1 July 2017 until 30 June 2020 and an annual salary of EUR 94,800 plus EUR 10,000 for each contractual year;

   c. a copy of an agreement, dated 8 June 2017, signed by and between the agency of the Claimant's agent, *'World in Motion'* and the Respondent, according to which the former represented, *inter alia*, that *"this Agreement shall not give rise to any obligation of the* [Respondent] *to conclude the agreement with the* [Claimant]*"*;

   d. a picture of himself while signing a document taken from what was claimed to be the Respondent's website;

   e. screenshots from the Respondent's alleged website showing the Claimant in a trophy room, apparently signing a document, with a caption reading *"Player A* […] *has joined Club C!"*, plus Facebook and Twitter accounts referring to an interview apparently given by the Claimant after the alleged signing.

4. According to the Claimant, pursuant to the alleged contract replicating the content of the alleged agreement sent on 6 June 2017 by the Respondent's representative, he was entitled to, *inter alia*, an annual remuneration of EUR 94,800 payable in monthly instalments in the amount of EUR 7,900 for 3 seasons.

5. On 12 September 2017, the Claimant lodged a claim against the Respondent in front of FIFA for breach of contract, requesting:

   a. that the Respondent be ordered to pay EUR 331,800 as compensation for breach of contract, plus 5% interest *p.a.* as of 7 July 2017, consisting of EUR 94,800 for each of the 3 years plus EUR 47,400 for *"specificity of sport"*;

   b. that sporting sanctions be imposed on the Respondent.

6. More specifically, the Claimant argued that, on 8 June 2017, after he had successfully passed all the medical tests, the parties signed the alleged contract replicating the content of the alleged agreement.

7. In respect of the above, the Claimant explained that he was not in possession of a copy of the alleged contract since, after the signature, the Respondent's representative allegedly had taken all the copies away.

8. Moreover, the Claimant pointed out that the parties, through the above-mentioned exchange of e-mails, had agreed on all the *essentialia negotii* required in order for a contract to be legally binding.

9. In continuation, the Claimant explained that, on 1 July 2017, he arrived in City G in order to start the employment relationship and *"tried to contact the* [Respondent]*, but nobody answered"*. The Claimant further pointed out that the Respondent replied to his offers of rendering his services only after having been solicited twice in writing, asking him to provide a copy of the employment contract. The Claimant added that, in reply to a third correspondence, dated 4 July 2017, by means of which he again offered his services threatening to lodge a claim before FIFA, the Respondent, on 7 July 2017, declared in writing that the Claimant had not passed the medical and physical tests.

10. The Claimant further argued that the Respondent's position concerning his unsuccessful medical examinations is contradictory, since on 8 June 2017, *i.e.* the same day as the date of signature of the alleged contract, the Respondent announced via its media channels that it had just signed a 3-year contract with the Claimant in clear terms and without referring to any future conditions.

11. Moreover, the Claimant added that the Respondent's stance violated art. 18 par. 4 of the FIFA Regulations on the Status and Transfer of Players according to which *"the validity of a contract may not be made subject to a successful medical examination"*, and that the club's behaviour constituted a case of *venire contra factum proprium*.

12. The Claimant concluded that the club terminated the alleged contract *"without just cause through its implicit conduct on 7 July 2017"*.

13. In its reply, the Respondent asked that the Claimant's claim be rejected and, in the alternative, that the present matter be referred to the NDRC of Country D.

14. More in particular, the Respondent argued that the only undisputable fact was that it had entered into negotiations with the Claimant's agent in order to explore the possibility of concluding an employment contract with his client. However, the Respondent added that, from the beginning of the negotiations, it had made it clear that, prior to the conclusion of an employment contract, the Claimant had to pass medical tests. In this respect, the Respondent pointed out that the medical tests took place in two parts, a first one on 8 June 2017 and a second one on 28 June 2017 and that, due to massive overweight, the Claimant did not pass the second test and he had been informed accordingly on the same day.

15. In continuation, the Respondent explained that, as a result of the above, it decided not to sign an employment contract with the Claimant. Consequently, according to the Respondent and contrary to what the Claimant claimed, no such contract exists.

16. In addition, the Respondent explained that the above-mentioned announcement on its official website was made only in future terms in case the Claimant would sign the contract.

17. Moreover, the Respondent added that the fact that it never affiliated the Claimant was confirmed by a series of circumstances, namely: (i) the Claimant signed a contract with the Club of Country H, Club J after having failed said medical tests; (ii) on Club J's official website *"Club K"* is considered the Claimant's former club rather than the Respondent, and (iii) the Respondent was not requested to issue any transfer certificate in order for the Claimant to sign with Club J.

18. Furthermore, the Respondent denied that its stance constituted a case of *venire contra factum proprium*, given that it had made it clear to the Claimant's agent during the negotiations that the conclusion of a contract was subject to a successful medical examination. In other words, according to the Respondent, what it had proposed to the Claimant was simply a conditional offer.

19. In any case, the Respondent added that, should the DRC deem instead that an employment contract had been concluded between the parties, the competence to hear the related matter would be of the *"relevant*

authorities/tribunals established within the Football Association of Country D ([…] such as the DRC of the Football Association L and the Football Arbitration Court of the Football Association L)". In this respect, the Respondent explained that the alleged agreement would contain a clear arbitration clause in favour of an independent arbitral tribunal established within the framework of the Football Association of Country D. More specifically, the Respondent referred to the unsigned copy of the alleged agreement submitted by the Claimant which, at Section 12, art. 8, reads as follows: *"Any disputes arising out of the Agreement shall be finally settled by the Dispute Resolution Chamber of the Football Association of Country D* […] *or Football Arbitration Court of Country D* […] *relevant to the competence of this authorities"*.

20. In his replica, the Claimant reiterated his position and, in relation to the Respondent's subsidiary defence, argued that the FIFA DRC should be deemed competent in light of the fact that: (i) the dispute is of an international dimension; (ii) the Respondent did not challenge the FIFA DRC competence in reply to the letter sent by the Claimant on 4 July 2017, where the latter had clearly indicated he would lodge a claim before FIFA; (iii) the NDRC of Country D does not fulfil the requirements of an independent arbitral tribunal; (iv) the provision mentioned by the Respondent does not make a clear reference to the NDRC of Country D.

21. In continuation, the Claimant explained that, in its reply, the Respondent did not contest the existence of an offer, the content of which he alleges is the same as the one of the agreement which was allegedly signed by the parties. Moreover, the Claimant argued that the announcement on the English version of the Respondent's website was in present and not future or conditional terms.

22. Finally, the Claimant pointed out that the results of the second medical test could not affect the validity of the alleged contract since, by then, according to him the alleged contract had been already signed. The Claimant concluded that, in any case, his unconditional acceptance of the Respondent's offer is sufficient to deem the alleged agreement valid and binding.

23. In its duplica, the Respondent entirely reiterated the position expressed in its reply to the claim.

24. The Claimant informed FIFA that, on 9 August 2017, he signed a contract with the Club of Country H, Club J, valid as from the date of signature until 30 November 2017 for a total remuneration of 99,035 and, on 8 January 2018, he signed a contract with the Club of Country D, Club K, valid as from the date of signature until 30 June 2019 for a total remuneration of EUR 9,360.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred as *DRC* or *Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber took note that the present matter was submitted to FIFA on 12 September 2017. Consequently, the DRC concluded that the 2017 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules)* is applicable to the matter at hand (cf. art. 21 of the Procedural Rules).

2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2018), the Dispute Resolution Chamber is, in principle, competent to deal with the matter at stake, which concerns a dispute with an international dimension between a Player of Country B and a Club of Country D in relation to an alleged employment relationship between the parties.

3. Having said that, the Chamber recalled the Respondent's position that, should the DRC consider that an employment contract had been entered into by and between the Claimant and the Respondent, it contested the DRC's competence in favour of deciding bodies of the Football Association of Country D referring to the contents of the alleged agreement.

4. In this regard, the Chamber concluded that no arbitration agreement had been in place between the Claimant and the Respondent, since the alleged agreement, which was referred to by the Respondent in respect of its position relating to competence, does not contain the signature of the parties concerned.

5. Consequently, the members of the Chamber confirmed that the DRC is competent to deal with the present matter in accordance with art. 22 lit. b) of the Regulations on the Status and Transfer of Players.

6. 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 (edition 2018), and considering that the present claim was lodged on 12 September 2017, the 2016 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

7. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. 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.

8. Having said that, the members of the Chamber acknowledged that, according to the Claimant, on 8 June 2017 he had concluded an employment contract with the Respondent valid as from 1 July 2017 until 30 June 2020, in accordance with which the Respondent allegedly had undertaken to pay him an annual salary of EUR 94,800 over 3 years. The Respondent had allegedly not been interested in his services after the alleged signing of the employment contract and, therefore, the Claimant asked to be awarded compensation for breach of contract by the Respondent in the amount of EUR 284,400, plus EUR 47,400 for *"specificity of sport"*.

9. On the other hand, the DRC noted that the Respondent, for its part, categorically denied the conclusion of an employment contract with the Claimant. The Respondent admitted that it had carried out negotiations with the Claimant's agent but that from the beginning of said negotiations it had made it clear that, prior to the conclusion of an employment contract, the Claimant had to pass medical tests.

10. Moreover, the Chamber observed that, according to the Respondent, the employment contract had not been signed due to the Claimant's failure to pass the medical test as a result of massive overweight.

11. In light of the above, the members of the Chamber observed that the pivotal issue in this dispute, considering the diverging position of the parties, was to determine as to whether or not an employment contract had been concluded between the Claimant and the Respondent. The DRC further observed that, only if this was to be answered in the affirmative, it would be necessary to determine whether the contract had been terminated without just cause by the Respondent as claimed by the Claimant and, if so, to decide on the consequences thereof.

12. Having said that, the members of the Chamber firstly referred to art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. The application of the said principle in the present matter led the members of the DRC to conclude that it was up to the Claimant to prove that the employment contract, on the basis of which he claimed compensation for breach of contract from the Respondent, indeed existed.

13. Having stated the above, the Chamber recalled that the Claimant maintained that he never received a copy of the employment contract he asserts having signed with the Respondent, since the latter's management allegedly had taken away all the copies soon after. However, the Claimant submitted a series of documents in support of his claim, which were in continuation examined by the members of the Chamber.

14. In this regard, the DRC took note of the documentation submitted by the Claimant, mentioned in number I./3. above. In this respect, the members of the Chamber noted that the Claimant had submitted, in brief: (i) an exchange of e-mails between his agent and the Respondent's representative concerning the financial terms of a possible engagement of the Claimant with the Respondent; (ii) an unsigned copy of the alleged agreement allegedly sent by the Respondent's representative to his agent via e-mail; (iii) a copy of an agency agreement, signed by and between the agency of the Claimant's agent and the Respondent and (iv) a few pictures taken from the alleged Respondent's website and extracts referring to an interview allegedly given after the alleged signing of the contract.

15. In respect of the above, the members of the Chamber first and foremost observed that the only signed document that had been provided by the Claimant was a copy of an agency agreement, dated 8 June 2017, signed by and between the agency of the Claimant's agent and the Respondent, according to which the former expressly represented that *"this Agreement shall not give rise to any obligation of the* [Respondent] *to conclude the agreement with the* [Claimant]*"*.

16. Having said this, the DRC proceeded to examine the exchange of e-mails submitted by the Claimant, in order to verify whether it was possible to retrieve an express acceptance of an offer containing the *essentialia negotii* of an employment agreement.

17. In this respect, the DRC acknowledged that the parties negotiated the terms of a future employment contract, exchanging to that end financial offers referring to the duration of the possible employment relationship. However, the Chamber observed at the same time that the parties never reached an agreement on any of such offers.

18. In relation to the above, the Chamber pointed out that, in a first e-mail dated 23 May 2017, Agent E, *i.e.* the Claimant's agent, informed Representative F, *i.e.* the Respondent's representative, that the Claimant was willing to join the Respondent at certain financial conditions. The DRC further took note that in reply, on 26 May 2017, Representative F made an offer to Agent E, containing different financial conditions, namely, *inter alia*, EUR 7,000 per month for 3 seasons and EUR 10,000 for each contractual year.

19. In continuation, the DRC noticed that, on 29 May 2017, Agent E addressed a counter-offer to Representative F, which contained higher financial demands, namely, *inter alia*, a salary of EUR 8,500 per month for the 2017/18 season and of EUR 10,000 per month for the 2 following seasons as well as EUR 12,000 for each contractual year or EUR 30,000 upfront. In other words, the Chamber observed that the Respondent's offer dated 26 May 2017 had not been accepted by the Claimant, who instead counter-proposed a higher remuneration.

20. What is more, the DRC deemed important to underline that, from the documentation produced by the Claimant, no written acceptance by the Respondent of the Claimant's counter-offer dated 29 May 2017 emerges. For the sake of completeness, the members of the Chamber added that the non-signed copy of the alleged agreement submitted by the Claimant, which was apparently sent to the latter by the Respondent on 6 June 2017, includes a lower remuneration than that asked by the Claimant in his counter-offer of 29 May 2017. In other words, the DRC concluded that, based on the documents provided by the Claimant, it could not be proven that either of the parties had unequivocally accepted in writing the other party's offer.

21. In continuation, the Chamber turned its attention to the other documentation produced by the Claimant. In this respect, the members of the DRC concluded that the pictures attached to the claim, as well as the reference to an extract of an interview, cannot by themselves constitute conclusive evidence strong enough to, substantially, replace the submission of a signed contract.

22. For the sake of argument, although confident that the foregoing line of reasoning was self-explaining, the members of the DRC observed that, even assuming that the above-mentioned pictures were taken in the Respondent's trophy room and that an interview had indeed been released to an official channel, such circumstances do not prove beyond any reasonable doubt that an employment contract had been signed. By the same token, the fact that the Respondent's media department had communicated, via its social media channels, that *"Player A* […] *has joined Club C!"*, does not mean and cannot prove, in and of itself, that the Claimant had signed a contract with the Respondent.

23. Having duly taken note of the aforementioned documentation presented by the Claimant, the members of the Chamber held that in order for the Chamber to be able to assume that the Claimant and the Respondent had indeed been bound to an employment contract with the terms as described by the Claimant, it had to be established, beyond any reasonable doubt, by documentary evidence, that said parties had indeed entered into a labour agreement, and, if so, under which terms. In general, the members of the Chamber held that they could not assume that an employment contract had been concluded by and between the parties simply based on circumstances which, in general, may be likely but are not certain to indicate the signing of a contract. In addition, the members of the Chamber agreed that the DRC must be very careful with accepting documents, other than the employment contract duly signed by the parties, as evidence for the conclusion of a contract.

24. In respect of the foregoing, the members of the Chamber had to conclude that the documents presented by the Claimant did not prove beyond any reasonable doubt that the Respondent and the Claimant had validly entered into an employment contract.

25. What is more, even assuming that it was possible to establish on the basis of the documents on file, other than an employment contract, that the parties had entered into a labour agreement, the Chamber wished to highlight that it would have needed to be in possession of such labour agreement in order to be able to properly assess the claim of the Claimant.

26. As a consequence, the Dispute Resolution Chamber decided that, since the Claimant had not been able to prove beyond any reasonable doubt that an employment contract had validly been concluded between himself and the Respondent, there was no need for the Chamber to enter into the question of whether or not such alleged employment contract had been breached.

27. All the above led the Dispute Resolution Chamber to conclude that the claim of the Claimant has to be rejected.

III. Decision of the Dispute Resolution Chamber

The claim of the Claimant, Player A, is rejected.

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Note relating to the motivated decision (legal remedy):

According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

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Encl.: CAS directives