

Decision of the Dispute Resolution Chamber (DRC) judge

passed on 8 November 2018,

by **Jon Newman (USA)**, DRC judge,

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
between the parties in connection with overdue payables

I. Facts of the case

1. On an unknown date, the player of Country B, Player A (hereinafter: *Claimant*), and the club of Country D, Club C (hereinafter: *Respondent*) signed an employment contract valid as from 1 May 2016 until 30 April 2017.
2. In accordance with the employment contract, the Respondent undertook to pay to the Claimant *inter alia* a monthly salary of USD 2,300.
3. By correspondence dated 24 May 2018, the Claimant put the Respondent in default of payment of salaries totalling USD 18,400 setting a time limit expiring on 4 June 2018 in order to remedy the default.
4. On 27 July 2018, the Claimant lodged a claim against the Respondent in front of FIFA asking that the Respondent be ordered to pay to him overdue payables in the amount of USD 18,400 corresponding to 8 monthly salaries, i.e. as from May 2016 until October 2016 and as from March 2017 until April 2017.
5. The Claimant further asked to be awarded “*all applicable interests in USD*”.
6. In spite of having been invited to do so, the Respondent has not replied to the claim.

II. Considerations of the DRC judge

1. First of all, the DRC judge analysed whether he was competent to deal with the matter at hand. In this respect, he took note that the present matter was submitted to FIFA on 27 July 2018. Consequently, the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (edition 2018; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 of the Procedural Rules).
2. Subsequently, the DRC judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in conjunction with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2018) he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player of Country B and a club of Country D.
3. Furthermore, the DRC judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (edition 2018), and considering that the present claim was lodged on 27 July 2018,

the 2018 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

4. The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. In this respect, the DRC judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the DRC judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.
5. Having said this, the DRC judge acknowledged that the Claimant and the Respondent signed an employment contract valid as from 1 May 2016 until 30 April 2017, in accordance with which the Claimant was entitled to receive from the Respondent, *inter alia*, a monthly salary of USD 2,300.
6. The Claimant lodged a claim against the Respondent in front of FIFA, maintaining that the Respondent has overdue payables towards him in the total amount of USD 18,400 corresponding to 8 monthly salaries, i.e. as from May 2016 until October 2016 and as from March 2017 until April 2017.
7. In this regard, the DRC judge noted that the employment contract does not stipulate the due date for payment of the Claimant's monthly salary and therefore, in line with the constant jurisprudence of the DRC, the DRC judge considered that salary payments fell due on the last day of each month during which the Claimant provided his services.
8. Having said that, the DRC judge referred to art. 25 par. 5 of the Regulations, which, in completion to the general procedural terms outlined in the Procedural Rules, establishes that the Dispute Resolution Chamber, or the DRC judge, shall not hear any dispute if more than two years have elapsed since the event giving rise to the dispute arose and that application of this time limit shall be examined *ex officio* in each individual case. Along those lines, the DRC judge established that the part of the Claimant's claim pertaining to salaries that fell due prior to 27 July 2016, i.e. the Claimant's salary for May and June 2016 totalling the amount of USD 4,600, is barred by the statute of limitations and, therefore, is not admissible.
9. In continuation, the DRC judge took particular note of the fact that, on 24 May 2018, the Claimant put the Respondent in default of payment of the aforementioned amount of USD 18,400, setting a time limit expiring on 4 June 2018 in order to remedy the default.

10. Consequently, the DRC judge concluded that the Claimant had duly proceeded in accordance with art. 12bis par. 3 of the Regulations, which stipulates that the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).
11. Subsequently, the DRC judge took into account that the Respondent, for its part, failed to present its response to the claim of the Claimant, in spite of having been invited to do so. In this way, the DRC judge considered that the Respondent renounced its right to defence and thus accepted the allegations of the Claimant.
12. Furthermore, as a consequence of the aforementioned consideration, the DRC judge concurred that in accordance with art. 9 par. 3 of the Procedural Rules he shall take a decision upon the basis of the documents already on file, in other words, upon the statements and documents presented by the Claimant.
13. Having said this, the DRC judge acknowledged that, in accordance with the employment contract provided by the Claimant, the Respondent was obliged to pay to the Claimant a monthly salary of USD 2,300.
14. Taking into account the documentation presented by the Claimant in support of his petition, the DRC judge concluded that the Claimant had substantiated his claim pertaining to overdue payables with sufficient documentary evidence.
15. On account of the aforementioned considerations, the DRC judge established that the Respondent failed to remit the Claimant's remuneration in the total amount of USD 13,800 corresponding to the Claimant's salary as from July 2016 until October 2016 and as from March 2017 until April 2017.
16. In addition, the DRC judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
17. Consequently, the DRC judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant overdue payables in the total amount of USD 13,800.
18. In addition, taking into account the Claimant's unspecified request for payment of interest as well as the constant practice of the Dispute Resolution Chamber, the DRC judge decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the amount of USD 13,800 as of the date of receipt of the claim, i.e. 27 July 2018.
19. In continuation, taking into account the consideration under number II./16. above, the DRC judge referred to art.12bis par. 2 of the Regulations which stipulates that

any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.

20. The DRC judge established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. On account of the above and bearing in mind that the Respondent did not reply to the claim of the Claimant, the DRC judge decided to impose a fine on the Respondent in accordance with art. 12bis par. 4 lit. c) of the Regulations. Furthermore, taking into consideration the amount due of USD 13,800, the DRC judge regarded a fine amounting to CHF 2,000 as appropriate and hence decided to impose said fine on the Respondent.
21. In this connection, the DRC judge wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

III. Decision of the DRC judge

1. The claim of the Claimant, Player A, is accepted in so far as it is admissible.
2. The Respondent, Club C, has to pay to the Claimant, within 30 days as from the date of notification of this decision, overdue payables in the amount of USD 13,800, plus interest at the rate of 5% *p.a.* as from 27 July 2018 until the date of effective payment.
3. In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.
4. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge of every payment received.
5. The Respondent is ordered to pay a fine in the amount of CHF 2,000. The fine is to be paid **within 30 days** of notification of the present decision to FIFA to the following bank account with reference to case nr. XXX:

UBS Zurich
Account number 366.677.01U (FIFA Players' Status)
Clearing number 230
IBAN: CH27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A

Note relating to the motivated decision (legal remedy):

According to article 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:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the DRC judge:

Omar Ongaro
Football Regulatory Director

Encl: CAS directives