# Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 10 August 2018,

in the following composition:

**Geoff Thompson (England)**, Chairman
**Carlos González Puche (Colombia),** member
**Eirik Monsen (Norway),** member
**Juan Batista Mahiques (Argentina),** member
**Daan de Jong (The Netherlands),** 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. On an unspecified date, the Player from Country B Player A, (hereinafter: *Claimant*), and the Club from Country D, Club C (hereinafter: *Respondent*), signed an employment contract valid for the seasons 2016/2017 and 2017/2018, ending on 30 June 2018.

2. According to art. 3 of the employment contract, the Claimant was entitled to receive from the Respondent, *inter alia*:

   a. a total amount of EUR 153,000 for the season 2016/2017, consisting of (i) EUR 50,000 as advance payment payable in two instalments of EUR 25,000 each, one falling due at signature and one on 25 August 2016; (ii) EUR 103,000 in 10 monthly salaries (1 x EUR 13,000 for August and 9 x EUR 10,000), payable the 30th day of each month as from August 2016 until May 2017, except for December 2016, which was payable on 1 January 2017 and February 2017, which was payable on 28 February 2017;

   b. a total amount of EUR 153,000 for the season 2017/2018.

3. According to clause n. 2) of the 'Special Provisions' of the employment contract, *"if the* [Respondent] *fails to pay and of the amounts referred in this Employment Contract for More than 90 days* […] *this contract may be terminated by the* [Claimant] *for just cause. In order to exercise the Option, the* [Claimant] *shall make a written official notification to the* [Respondent] *and if the* [Respondent] *does not pay the due amount within 30 days after receiving this Legal Notification, the* [Claimant] *will be free to sign contracts with any other Clubs"*.

4. According to clause n. 3) of the above-mentioned 'Special Provisions', *"The amounts of match bonuses shall be due and payable at the latest at the end of the month following the month during which the concerned matches are played"*.

5. By letter dated 4 October 2016, the Claimant put the Respondent in default of payment of EUR 38,000, consisting of EUR 20,000 as part of the second instalment of the advance payment, EUR 8,000 as remaining part of August 2016 and EUR 10,000 as salary of September 2016, asking to be paid within 10 days.

6. By a further letter addressed to the Respondent on 2 November 2016, the Claimant put the Respondent in default of payment of EUR 48,000, consisting of the previously requested outstanding dues plus EUR 10,000 as salary of October 2016, asking to be paid within 5 days.

7. In reply to said last correspondence, the Respondent informed the Claimant that, in order to validly claim his dues, he had to comply with the requirements established in clause n. 2) of the 'Special Provisions' of the employment contract. However, with the same letter, the Respondent acknowledged the existence of the claimed debt towards the Claimant and declared that it was *"going to pay some*

*amount to the player in due course this week and complete the outstanding payments very soon"*.

8. By letter dated 23 May 2017, the Claimant put the Respondent in default of payment of EUR 55,000, consisting of EUR 5,000 of his salary of December 2016, EUR 40,000 for his salaries as from January until April 2017 and a bonus payment of 38,000 in the currency of Country D, which he converted into EUR 10,000, asking to be paid within 30 days.

9. By letter dated 26 June 2017, the Claimant unilaterally terminated the contract, claiming that, by then, the Respondent had failed to pay the amounts requested in his default notice of 23 May 2017 plus EUR 10,000 as salary of May 2017.

10. On 14 September 2017, the Claimant lodged a claim against the Respondent in front of FIFA maintaining that he had just cause to terminate the contract and requesting to be awarded the total amount of EUR 208,000 and 30,000, consisting of:

    a. EUR 55,000, corresponding to outstanding salaries as from December 2016 until May 2017;

    b. 38,000 as a bonus, which allegedly became due on 7 May 2017;

    c. EUR 153,000 as compensation for breach of contract, corresponding to its residual value;

    d. 5% interest p.a. on the above-mentioned sums as of *"the respective date of maturity"*.

11. With his claim, the Claimant further requested the reimbursement of legal costs and that sporting sanctions be imposed on the Respondent.

12. More in particular, the Claimant argued that, after two default notices and with different bank orders, by the end of February 2017, the Respondent had fulfilled its contractual obligations with regards to his salary entitlements up to November 2016. However, the Claimant affirmed that, after its last payment of EUR 5,000 on 21 March 2017 in relation with half of his salary for December 2016, the Respondent stopped paying him altogether. Consequently, the Claimant explained that on 23 May 2017 salaries in the total amount of EUR 55,000 were outstanding.

13. Furthermore, the Claimant pointed out that he had just cause to terminate the contract on 26 June 2017, since, by then, the Respondent had failed to pay him EUR 55,000, consisting of the remaining part of December 2016 (*i.e.* EUR 5,000) and his monthly remuneration as from January until May 2017 (*i.e.* EUR 10,000 each month). The Claimant further explained that the Respondent had also failed to pay him his bonus of 38,000 related to the winning match against Club E of 7

May 2017, which had allegedly been paid to all the other players registered for the first team.

14. Despite having been invited by FIFA to provide its comments on the present matter, the Respondent did not answer to the claim.

15. The Claimant informed FIFA that he did not enter into any new employment relationship after the termination of the contract.

## 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 14 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: *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 competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Player from Country B and a Club from Country D.

3. Furthermore, 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 14 September 2017, the 2016 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

4. 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.

5. Having said that, the members of the Chamber acknowledged that, on an unspecified date, the Claimant and the Respondent concluded an employment contract valid for the seasons 2016/2017 and 2017/2018, ending on 30 June 2018, pursuant to which the Claimant was entitled to, *inter alia*, a total amount of EUR 153,000 for the season 2016/2017 and a total amount of EUR 153,000 for the season 2017/2018.

6. The DRC subsequently acknowledged that, according to the Claimant, he had just cause to unilaterally terminate the employment contract on 26 June 2017, due to the fact that, by then, the Respondent had failed to remit him 5 monthly salaries, plus half of his salary of December 2016. The members of the Chamber equally took into account that the Claimant had put the Respondent in default of payment of his outstanding salaries on 3 occasions prior to terminating the contract, each time partially referring to different monthly entitlements, as the Respondent apparently had made partial payments to the Claimant in the meantime. Moreover, the DRC took note that in his last notice of default, dated 23 May 2017, the Claimant put the Respondent in default of payment of EUR 55,000, consisting of EUR 5,000 for his salary of December 2016, EUR 40,000 for his salaries as from January until April 2017 and a bonus payment of 38,000 in the currency of Country D, which he converted into EUR 10,000. Irrespective of the question as to whether clause n. 2) of the 'Special Provisions' of the employment contract in the matter at stake can be considered acceptable, the members of the DRC further noted that with his default notice of 23 May 2017, which included financial entitlements that had been outstanding for more than 90 days, the Claimant granted the Respondent 30 days within which to remedy the default.

7. Furthermore, the Chamber took note that the Respondent, for its part, failed to present its response to the claim of the Claimant, despite having been invited to do so. In this way, the Chamber deemed, the Respondent renounced its right to defence and accepted the allegations of the Claimant.

8. Moreover, and as a consequence of the aforementioned consideration, the Chamber established that in accordance with art. 9 par. 3 of the Procedural Rules it shall take a decision upon the basis of the documents already on file.

9. On account of the above, the Chamber highlighted that the underlying issue in this dispute was to determine as to whether the employment contract had been terminated by the Claimant with just cause and, subsequently, to determine the consequences thereof.

10. Having said that, the members of the DRC observed that the Respondent had been put in default of payment of his salaries by the Claimant initially on 4 October 2016, once again on 2 November 2016 and one last time on 23 May 2017. The Chamber took into account that in its reply to the Claimant's second default notice the Respondent acknowledged the existence of a debt towards the Claimant and

merely referred to the formalities of the above-mentioned clause n. 2) of the employment contract. The members of the Chamber took into consideration that the Respondent had not replied to the Claimant's third default notice nor to the claim of the Claimant and thus had not denied the existence of the debt towards the Claimant as specified by the latter in said third default notice. Furthermore, the Chamber stressed that when the Claimant terminated the employment contract on 26 June 2017, he had not received more than 5 consecutive salary payments as of December 2016.

11. On account of the above, the Chamber concluded that the Respondent had blatantly neglected its contractual obligations towards the Claimant by failing to pay the latter more than 5 consecutive monthly salaries.

12. With the foregoing in mind, the Chamber considered that the Respondent was found to be in breach of the contract and that, in line with the Chamber's longstanding and well-established jurisprudence the breach was of such seriousness that the Claimant had just cause to unilaterally terminate the employment contract with the Respondent on 26 June 2017.

13. On account of the above-mentioned considerations, the Chamber decided that the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant.

14. In continuation, prior to establishing the consequences of the termination of the employment contract with just cause by the Claimant, the Chamber decided that the Respondent must fulfil its obligations as per the employment contract in accordance with the general legal principle of "*pacta sunt servanda*". Consequently, the Chamber decided that the Respondent is liable to pay to the Claimant five and a half monthly salaries, pertaining to December 2016 until May 2017, in the amount of EUR 55,000.

15. In addition, taking into consideration the Claimant's claim, the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* as of the day following the day on which each instalment fell due in accordance with the employment contract until the date of effective payment.

16. As regards the bonus payment of 38,000 requested by the Claimant in relation to the match against Club E of 7 May 2017, bearing in mind art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, the DRC concluded that the Claimant did not provide sufficient evidence corroborating his entitlement to said additional remuneration. Indeed, the employment contract does not indicate any monetary value in respect of said alleged bonus. Consequently, the Chamber had to reject this part of the Claimant's claim.

17. In continuation and having established that the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant, the Chamber decided that, taking into consideration art.17 par. 1 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract in addition to the aforementioned outstanding remuneration.

18. In this context, the Chamber outlined that in accordance with said provision the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

19. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the contract at the basis of the matter at stake.

20. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the regulations. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the Claimant under the terms of the employment contract as from its termination and concluded that the Claimant would have been entitled to receive EUR 153,000 as remuneration had the employment contract been executed until its regular expiry date, *i.e.* 30 June 2018.

21. In continuation the Chamber assessed as to whether the Claimant has signed an employment contract with another club during the relevant period of time, by means of which he would have been able to reduce his loss of income. According to the constant practice of DRC, such remuneration under a new employment contract(s) shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.

22. In respect of the above, the Chamber recalled that the Claimant had not signed any other employment contract after the termination of the one at stake in the present matter, and therefore he was not able to mitigate his damages.

23. Consequently, on account of all of the above-mentioned considerations, the Chamber decided that the Respondent must pay the amount of EUR 153,000 to the Claimant as compensation for breach of contract.

25. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the amount of compensation as of the date on which the claim was lodged, *i.e.* 14 September 2017, until the date of effective payment.

27. In addition, as regards the claimed legal expenses, the Chamber referred to art. 18 par. 4 of the Procedural Rules as well as to its longstanding and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber. Consequently, the Chamber decided to reject the Claimant's request relating to legal expenses.

28. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

## III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player A, is partially accepted.

2. The Respondent, Club C, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of EUR 55,000, plus 5% interest *p.a.* as follows:

   a. 5% *p.a.* on EUR 5,000 as of 2 January 2017 until the date of effective payment;

   b. 5% *p.a.* on EUR 10,000 as of 31 January 2017 until the date of effective payment;

   c. 5% *p.a.* on EUR 10,000 as of 1 March 2017 until the date of effective payment;

   d. 5% *p.a.* on EUR 10,000 as of 31 March 2017 until the date of effective payment;

   e. 5% *p.a.* on EUR 10,000 as of 1 May 2017 until the date of effective payment;

   f. 5% *p.a.* on EUR 10,000 as of 31 May 2017 until the date of effective payment.

3. The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 153,000, plus 5% interest *p.a.* as from 14 September 2017 until the date of effective payment.

4. In the event that the amounts due to the Claimant in accordance with the above-mentioned numbers 2. and 3. are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. Any further claim lodged by the Claimant is rejected.

6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.

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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:

Court of Arbitration for Sport (CAS)
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CH-1012 Lausanne
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For the Dispute Resolution Chamber:

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Encl.: CAS directives