

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 Bautista 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
between the parties

I. Facts of the case:

1. On 18 June 2013, the Player of Country B, Player A (hereinafter: *the Claimant*), and the Club of Country D, Club C (hereinafter: *the Respondent*), concluded an employment contract (hereinafter: *the contract*) valid as from 1 July 2013 until 30 June 2017.
2. According to article 7.1 of the contract, the Respondent undertook to pay the Claimant a monthly remuneration in the amount of 24,000 to be paid *“within the first fifteen days of the following month”*.
3. On the same date, 18 June 2013, the Claimant and the Respondent signed a document labeled *“Agreement Complementary”* (hereinafter: *the complementary agreement*). This document stipulates, *inter alia*, that:

“The [Respondent] undertakes to pay the [Claimant] a monthly wage:

 - *Upon the execution of the agreement – amount of 1500000;*
 - *From 07/01/2013 – amount of 776000 per month;*
 - *From 07/01/2014 – amount of 896000 per month;*
 - *From 07/01/2015 – amount of 896000 per month;*
 - *From 07/01/2016 – amount of 896000 per month.”*
4. Subsequently, the parties concluded, on 1 July 2016, a *“Supplementary Agreement”* (hereinafter: *the supplementary agreement*) by means of which clause 7.1 of the contract should be modified as follows:
 - “1. The monthly salary, without including compensatory, incentive, and social payments of the [Claimant] is fixed at 30,000 (thirty thousand).*
 - 2. The remaining terms of the contract are left unchanged...”*
5. On 19 October 2017, the Claimant lodged a claim against the Respondent before FIFA and requested the payment of a total amount of EUR 81,690 corresponding to his outstanding salaries from January 2017 until June 2017 (cf. point I.8 below), plus 5% interest *p.a.* as from each due date until the effective date of payment.
6. On 27 February 2018, the Claimant amended his claim asking to be awarded EUR 134,756, amount that according to the Claimant is equivalent to 9,276,800 (cf. points I.15 and I.16 below).
7. The Claimant further asked that the Respondent be sanctioned and *“to condemn the [Respondent] to cover all cost of this proceeding”*.
8. In his claim, the Claimant explained that the Respondent failed to pay his salaries from January 2017 until June 2017. In this respect, the Claimant argued that according to the contract and the complementary agreement he was entitled to receive a total monthly remuneration of 920,000 (896,000 + 24,000), amount that

the Claimant estimates in the sum of EUR 13,615. Consequently, the Claimant stated that he is entitled to receive EUR 81,690 as outstanding salaries, *i.e.* salaries from January 2017 until June 2017 (6*13,615).

9. Furthermore, the Claimant explained that by means of a letter dated 17 November 2017 he put the Respondent in default of payment of 5,520,000, amount that corresponds to his outstanding salaries from January 2017 until June 2017 (920,000 x 6).
10. In its reply to the claim lodged by the Claimant, the Respondent argued that it has fulfilled all its obligations deriving from the contract, the complementary agreement and the supplementary agreement.
11. In particular, the Respondent explained that according to said documents the Claimant was entitled to receive a total amount of 44,132,880. On that basis, the Respondent argued that, according to its *"accounting record"* allegedly signed by the Claimant, during the duration of its contractual relation with the Claimant the latter received payments for a total amount of 45,805,400. Consequently, the Respondent held that it had complied with all its contractual obligations regarding the Claimant.
12. In his *replica*, the Claimant pointed out that the club was not able to present *"any receipt or proof of payment of the overdue amounts"* owed to him, such as bank receipts.
13. In addition, the Claimant stressed that according to the supplementary agreement presented by the Respondent his *"official"* monthly salary *"has received an increase"* of 6,000, *i.e.* from 24,000 to 30,000.
14. Regarding the accounting record presented by the Respondent, the Claimant stated that *"the simple existence of an accounting record in a book seems to be extremely odd for a professional football club"*. However, the Claimant argued that, according to said document, as of October 2015 his *"total salary"* was increased from 920,000 to 1,241,600, amount that according to the Claimant corresponds to EUR 18,037.
15. As a consequence of the above and, *"after reviewing the terms of the supplementary agreement and the accounting record"* presented by the Respondent, the Claimant held that the Respondent confessed that it owed him a total amount of 9,276,800, *"equivalent to EUR 134,756"*.
16. Consequently, the Claimant amended his claim and requested a total amount of EUR 134,756, plus 5% interest *p.a.* as from each due date until the date of effective

payment, sum that according to the Claimant corresponds to part of his outstanding salaries for December 2016 as well as the full first six months of 2017.

17. The Respondent submitted its *duplica*, reiterating its arguments and confirming its positions with regard to the claim.
18. In addition, the Respondent stated that all the documents presented are certificates “according to the legislation of Country D”.
19. Furthermore, the Respondent stated that in September 2015 the Claimant “*appealed to the management of the [Respondent] about the early repayment under existing Contract in connection with the difficult economic situation associated with acquisition of real state and payment of loans*” and therefore, as from October 2015 it “*began to make early repayments to the [Claimant] within the obligations under the contract*”.
20. Finally, the Respondent pointed out that if the Claimant’s salary was increased since October 2015, then he must provide “*the relevant supporting documents (additional agreement, certificates or other documents signed by the parties)*”.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *DRC* or *Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 19 October 2017. Consequently, 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 2017 and 2018 editions 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 of Country B and a Club of 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 (editions 2016 and 2018), and considering that the present matter was submitted to FIFA on 19 October 2017, the 2016 edition of the aforementioned regulations

(hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

4. The competence of the DRC and the applicable regulations having been established, the members of the Chamber entered into the substance of the matter, while emphasizing that, although having acknowledged all the above-mentioned facts, 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. Firstly, the DRC acknowledged that, on 18 June 2013, the Claimant and the Respondent concluded an employment contract valid as from 1 July 2013 until 30 June 2017. According to article 7.1 of the contract, the Claimant was entitled to receive a monthly remuneration in the amount of 24,000.
6. Furthermore, the Chamber observed that on the same date, *i.e.* 18 June 2013, the Claimant and the Respondent signed a complementary agreement. This document stipulates, *inter alia*, that:

"The [Respondent] undertakes to pay the [Claimant] a monthly wage:
- Upon the execution of the agreement – amount of 1500000;
- From 07/01/2013 – amount of 776000 per month;
- From 07/01/2014 – amount of 896000 per month;
- From 07/01/2015 – amount of 896000 per month;
- From 07/01/2016 – amount of 896000 per month.
7. In addition, the members of the Chamber noted that, on 1 July 2016, the parties concluded a *supplementary agreement* by means of which clause 7.1 of the contract was modified as follows:

"The monthly salary, without including compensatory, incentive, and social payments of the [Claimant] is fixed at 30,000 (thirty thousand)".
8. The DRC further observed that, on 19 October 2017, the Claimant lodged a claim against the Respondent before FIFA and requested the payment of a total amount of EUR 81,690, amount that according to the Claimant corresponds to his outstanding salaries from January 2017 until June 2017.
9. Equally, the members of the Chamber noted that, on 27 February 2018, the Claimant amended his claim asking to be awarded a total amount EUR 134,756. In this regard, the DRC acknowledged that the Claimant held that in its *"accounting record"* the Respondent confessed that it owed him a total amount of 9,276,800, sum that according to the Claimant is *"equivalent to EUR 134,756"*.
10. In continuation, the Dispute Resolution Chamber took note that the Respondent argued that, according to its *"accounting record"*, it has fulfilled all its obligations

deriving from the contract, the complementary agreement and the supplementary agreement during the duration of its contractual relation with the Claimant.

11. In this regard, the DRC recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 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.
12. According to this, the members of the Chamber noted that the Respondent did not substantiate its defence, as it did not present any conclusive documentary evidence, such as bank receipts, which could corroborate that the Claimant's salaries from January 2017 until June 2017 were paid.
13. Moreover, the Chamber highlighted that during said period of time, *i.e.* January 2017 until June 2017, it was contractually agreed that the Claimant was entitled to receive a total monthly remuneration of 926,000 consisting of: (i) 896,000, established in the complementary agreement, and (ii) 30,000, established in the supplementary agreement.
14. On account of the aforementioned considerations and in accordance with the principle of *pacta sunt servanda*, the DRC decided that the Respondent is liable to pay to the Claimant outstanding remuneration in the total amount of 5,556,000 (926,000 * 6). In this regard, the Chamber was eager to emphasise that, in accordance with its well-established jurisprudence in this respect, in the matter at hand it cannot grant any outstanding amounts in Euros, as the parties had agreed upon payment of the Claimant's remuneration in Currency of Country D.
15. In continuation and with regard to the Claimant's request for interest, the DRC decided that the Claimant is entitled to receive interest as follows:
 - a) 5% *p.a.* over the amount of 926,000 as from 16 February 2017 until the date of effective payment;
 - b) 5% *p.a.* over the amount of 926,000 as from 16 March 2017 until the date of effective payment;
 - c) 5% *p.a.* over the amount of 926,000 as from 16 April 2017 until the date of effective payment;
 - d) 5% *p.a.* over the amount of 926,000 as from 16 May 2017 until the date of effective payment;
 - e) 5% *p.a.* over the amount of 926,000 as from 16 June 2017 until the date of effective payment;
 - f) 5% *p.a.* over the amount of 926,000 as from 16 July 2017 until the date of effective payment.
16. Furthermore, as regards the claimed procedural costs, the Chamber referred to art. 18 par. 4 of the Procedural Rules as well as to the long-standing and well-

established jurisprudence of the DRC, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber. Consequently, the DRC decided to reject the Claimant's request relating to procedural costs.

17. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claims lodged by the Claimant are 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 5,556,000.
3. **Within the same deadline**, the Respondent has to pay to the Claimant interest as follows:
 - 5% *p.a.* over the amount of 926,000 as from 16 February 2017 until the date of effective payment;
 - 5% *p.a.* over the amount of 926,000 as from 16 March 2017 until the date of effective payment;
 - 5% *p.a.* over the amount of 926,000 as from 16 April 2017 until the date of effective payment;
 - 5% *p.a.* over the amount of 926,000 as from 16 May 2017 until the date of effective payment;
 - 5% *p.a.* over the amount of 926,000 as from 16 June 2017 until the date of effective payment;
 - 5% *p.a.* over the amount of 926,000 as from 16 July 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 limit, 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.

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