

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 14 February 2016, the Player of Country B, Player A (hereinafter: *the Claimant*), and the Club of Country D, Club C (hereinafter: *the Respondent*), signed an employment contract valid as from the date of signature until 31 May 2017.
2. According to art. 9 of the employment contract, the Claimant was entitled, *inter alia*, to a monthly salary of 5,000, to be paid *"by the date of 20 each month, but not later than the last day/date of the current month for which the [Claimant] has already rendered the work"*.
3. Art. 3.1 of the employment contract stipulates that any appendix or additional act to the employment contract shall be valid only if signed by the parties, registered with the Football Association of Country D (Football Association E) and refers to the employment contract.
4. Art. 3.2 of the employment contract reads as follows: *"This contract is/ is not accompanied by an annex (consisting of _____ pages)."*
5. On 14 February 2016, the parties also signed an *"Agreement"*, valid as from the signature date until 30 June 2017, according to which, *inter alia*:
 - a. *"the [Claimant] will get a payment of 1500 [...] USD every month"*;
 - b. *"if a player plays 50% of first team matches per month, salary will be 3,000 [...] American dollars net per month"*.
6. By letter dated 13 September 2017, the Claimant put the Respondent in default of the payment of 75,000 and USD 13,500.
7. On 3 October 2017, the Claimant lodged a claim against the Respondent in front of FIFA, requesting to be awarded the amounts of 75,000 (5,000 per month as from March 2016 until May 2017) and USD 13,500 (USD 1,500 for August 2016 and USD 3,000 per month as from February 2017 until May 2017) plus interest as follows:
 - a. 5% *p.a.* on 5,000 as from the first day of each month as from April 2016 until June 2017 until effective payment;
 - b. 5% *p.a.* on USD 1,500 as from 1 September 2016 until effective payment;
 - c. 5% *p.a.* on USD 3,000 as from the first day of each month as from March 2017 until June 2017 until effective payment.
8. The Claimant further requested that sporting sanctions be imposed on the Respondent.

9. More specifically, the Claimant argued that, after signing the employment contract and the agreement, the Respondent did not fulfil its financial obligations towards him. In this respect, the Claimant explained that the agreement and the employment contract had to be considered as being cumulative, with the consequence of the Claimant being entitled to a monthly basic salary of 5,000 plus a monthly remuneration in USD, which had to be quantified in USD 1,500 or USD 3,000, depending on the amount of games played with the Respondent.
10. With regards to the above, the Claimant specified that, during the whole duration of the contract, the Respondent failed to remit him the salaries established in the employment contract for a total amount of 75,000 (i.e. 5,000 per month as from March 2016 until May 2017) and failed to pay him USD 13,500 on the basis of the agreement (USD 1,500 for August 2016 and USD 3,000 per month as from February 2017 until May 2017).
11. More in particular, the Claimant argued that, having played more than 50% of the games in the relevant periods, he was entitled to USD 3,000 for the months of August 2016, February, March, April and May 2017 and indicated that during those months the Respondent had paid him only USD 1,500 for August 2016.
12. Furthermore, with regards to the salary claimed for the months of April and May 2017, during which he suffered from an injury, the Claimant explained that *"according to the internal regulations of the [Respondent], if there are no matches in the particular month or if the particular football player of the [Respondent] is injured in the match of the [Respondent], the football player shall receive salary in the amount corresponding to the salary received by the football player in the previous month [...]"*.
13. In its reply, the Respondent asked that the Claimant's claim be rejected for the amount claimed, while acknowledging the existence of a debt towards him in the amount of USD 9,000.
14. More in particular, the Respondent recognised that, on 14 February 2016, the parties had signed an employment contract and an agreement, but argued, with regards to the salary payments, that the entitlements provided in said two documents were not cumulative. According to the Respondent, in respect of its financial obligations, the agreement replaced the employment contract, thus establishing the sole salary of USD 1,500 or USD 3,000 depending on the Claimant's match appearances.
15. In continuation, the Respondent explained that, *"at least"* up to 31 December 2016, it had fulfilled its financial obligations towards the Claimant and that it had encountered some financial difficulties as from February 2017, which was the reason why it had not paid the Claimant his salaries for the

period between February and May 2017. In this respect, the Respondent submitted 4 translated receipts signed by the Claimant, in each of which the latter *"confirm[ed] that [the Respondent] fulfilled all their financial obligations under the contracts"*, respectively, on 31 March 2016, on 30 June 2016, on 30 September 2016 and on 31 December 2016.

16. In respect of the above, the Respondent alleged that the Claimant had verbally accepted a late payment of the outstanding amounts prior to leaving the country at the end of the employment contract.
17. Moreover, the Respondent specified that the outstanding dues amounted to USD 9,000, since the Claimant was entitled to USD 3,000 each for the months of February and March 2017 but only to USD 1,500 for each of the months of April and May 2017, having played in less than 50% of official matches in April and having not played at all in May.
18. Furthermore, and in particular referring to the outstanding dues of May 2017, the Respondent denied the existence of the internal regulation invoked by the Claimant. The Respondent added that it had invited him on 31 October 2017 to fly to Country D in order to collect the monies it still owed him.
19. In his replica, the Claimant entirely reiterated his position and added that the Respondent had substantially forced him to sign those 4 receipts *"under the threat of not receiving of salary payment"*. Consequently, according to the Claimant, said documents should be considered deprived of *"legal force"*. Moreover, the Claimant acknowledged that he had been invited to collect his monies but explained that it was not his intention to fly back to Country D to get only 20,000, since it was not worth it for that amount and it was anyway less than what the Respondent owed him.
20. In its duplica, the Respondent entirely reiterated the position expressed in its reply to the claim. With regards to the Claimant's statement concerning the 4 receipts, the Respondent noted that, with his last submission, the Claimant had recognised their authenticity and added that they cannot be considered without legal force since they bear his signature.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the matter at stake. In this respect, the DRC took note that the present matter was submitted to FIFA on 3 October 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 DRC 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 analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the DRC confirmed that in accordance with art. 26 par. 1 and par. 2 of the said Regulations (edition 2018) and considering that the present claim was lodged in front of FIFA on 3 October 2017, the 2016 edition of the Regulations on the Status and Transfer of Players (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. 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. In this respect, the DRC acknowledged that, according to the employment contract signed by the parties on 14 February 2016, the Claimant was entitled, *inter alia*, to a monthly salary of 5,000. In addition, the Chamber observed that, according to art. 3.1 of the employment contract, any appendix or additional act to it, in order to be valid, had to: (i) bear the signature of the parties, (ii) be registered with the Football Association E and (iii) refer to the employment contract.
6. The members of the Chamber further noted that on the same day on which the employment contract was concluded, *i.e.* 14 February 2016, the parties also signed an "*Agreement*", valid as from the signature date until 30 June 2017, according to which, *inter alia*, "*the [Claimant] will get a payment of 1500 [...] USD every month*". The DRC also noted that, according to said agreement, "*if a player plays 50% of first team matches per month, salary will be 3,000 [...] American dollars net per month*".
7. In continuation, the members of the Chamber observed that, according to the Claimant, the employment contract and the agreement had to be considered cumulative with regards to the financial obligations envisaged in said documents. Moreover, according to the Claimant, the Respondent had failed to remit to him the entirety of the salaries established in the employment contract for a total amount of 75,000 and failed to pay him USD

13,500 on the basis of the agreement. In this regard, the Chamber further noted that the Claimant requested USD 1,500 for August 2016 and USD 3,000 per month as from February 2017 until May 2017, as he had allegedly played more than 50% of the games in the relevant periods whereas the club had only paid USD 1,500 for August 2016.

8. In continuation, the members of the Chamber noted that the Respondent, for its part, deemed that the employment contract and the agreement were not cumulative, as the latter had allegedly replaced the former with regards to salary payments.
9. Having said that, the DRC further noted that the Respondent acknowledged being in debt towards the Claimant of the total amount of USD 9,000 due to financial difficulties it had allegedly faced as from February 2017. In this respect, the DRC noted that the Respondent claimed having fulfilled its financial obligations "*at least*" up to 31 December 2016. The Chamber further took into account that, according to the Respondent, the Claimant was entitled to USD 3,000 each for the months of February and March 2017 but only to USD 1,500 each for the months of April and May 2017, having allegedly played in less than 50% of the official matches in April and having not played at all in May.
10. On account of the above, and considering the disagreement of the parties on this point, the Chamber highlighted that the pivotal issue in this dispute was to determine as to whether the employment contract and the agreement provided for cumulative salaries or not.
11. In this respect, the members of the DRC first turned their attention to art. 3.1 of the employment contract, according to which any appendix or additional act to the employment contract would be valid only if certain conditions were met, namely: the parties' signature, registration with the Football Association of Country D (Football Association E) and reference to the employment contract. In other words, the members of the Chamber were eager to underline that, in order for the agreement to be considered additional to the employment contract, on top of two formal requirements, it had to refer to the latter.
12. With the foregoing in mind, the DRC observed that the agreement lacked any reference to the employment contract whatsoever. Therefore, pursuant to the employment contract itself, the agreement could not be considered its appendix. The members of the Chamber were rather of the opinion, instead, that the agreement constituted a standalone contract, which provided for more favourable financial entitlements of the Claimant.
13. In this context, the members of the Chamber deemed it worthwhile to also take into account the parties' stance during the employment relationship. In this respect, the members of the DRC noted that the Respondent, up to

December 2016, had regularly paid the Claimant his USD salaries whereas it had never paid those in since the beginning of the employment relationship. Equally, the members of the Chamber noted that the Claimant, however, had never claimed his salaries until his default letter dated 13 September 2017.

14. Consequently, the DRC concluded that the parties intended and agreed that the agreement included the sole financial obligations of the Respondent towards the Claimant, *i.e.* a monthly salary of USD 1,500, to be brought up to USD 3,000 should the Claimant reach the threshold of 50% match appearances.
15. The foregoing being established, the members of the DRC turned their attention to the question as to whether the Claimant was entitled to any outstanding remuneration and, in the affirmative, to the amount.
16. In this respect, the DRC noted, first and foremost, that the Respondent acknowledged having failed to pay the Claimant his remuneration between February and May 2017 due to the financial distress it allegedly had encountered.
17. In continuation, the members of the Chamber observed that, during the course of the proceedings, the Respondent had produced 4 receipts, which the Claimant acknowledged having signed, declaring that the Respondent had fulfilled its financial obligations up to 31 December 2016.
18. With respect to the Claimant's allegation that the Respondent had extorted his signature on said receipts, the Chamber deemed it fit to emphasise that the Claimant had submitted no documentation in support of such allegation, thereby referring to art. 12 par. 3 of the Procedural Rules. Consequently, the Chamber concluded that such argument could not be upheld.
19. Consequently, and bearing in mind that the Claimant did not claim his USD salary for January 2017, the DRC concluded that he is entitled to outstanding remuneration for the months between February and May 2017.
20. However, the members of the Chamber noted that it remained to be established whether the threshold of 50% appearances had been reached during said period, as the Claimant requested to be awarded USD 3,000 for each month, whereas the Respondent argued that in April and May 2017 he was entitled to USD 1,500 each month only.
21. In respect of the above, 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 concurred in the conclusion that the Claimant did not provide sufficient evidence corroborating the allegations on the basis of which he would be entitled to USD 3,000 during said period due to his match appearances. On the other

hand, the DRC took into account the fact that the Respondent submitted copies of statistics related to 6 games played during the month of April, from which it emerged that the player played in only 2 of them, *i.e.* less than 50%.

22. In continuation, concerning the month of May 2017, the Respondent explained that the Claimant had not played at all since he was injured. In this respect, mindful of the above-mentioned provision of the Procedural Rules, the Chamber decided to reject the Claimant's argument that in case of injury any player of the Respondent would be entitled to the monthly salary received the month before, due to the lack of documentary evidence provided in that sense.
23. In light of all the foregoing considerations, the DRC concluded that, in accordance with the general legal principle of "*pacta sunt servanda*", the Respondent is liable to pay the amount of USD 9,000 to the Claimant.
24. In addition, taking into account the Claimant's claim, the Chamber decided to award the Claimant interest of 5% *p.a.* as of the day following the day on which the relevant payments fell due in accordance with the agreement, which, in the absence of any specific due date was considered to be the last day of the relevant month.
25. The Chamber concluded its deliberations in the present matter by rejecting any further claim of the Claimant.

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 USD 9,000, plus 5% interest *p.a.* as follows:
 - a. 5% *p.a.* on USD 3,000 as of 1 March 2017 until the date of effective payment;
 - b. 5% *p.a.* on USD 3,000 as of 1 April 2017 until the date of effective payment;
 - c. 5% *p.a.* on USD 1,500 as of 1 May 2017 until the date of effective payment;
 - d. 5% *p.a.* on USD 1,500 as of 1 June 2017 until the date of effective payment.

3. In the event that the amount due to the Claimant in accordance with the above-mentioned number 2 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. Any further claim lodged by the Claimant is rejected.
5. 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 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