

Decision of the Dispute Resolution Chamber (DRC) judge

passed on 22 October 2018,

by **Jon Newman** (United States of America), 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 5 July 2017, 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 the signature until 30 June 2020.
2. On 27 January 2018, the Claimant and the Respondent signed a termination agreement, by means of which the Respondent undertook the obligation to pay to the Claimant the amount of EUR 17,000 amount payable as follows:
 - EUR 8,500 by no later than 30 March 2018; and
 - EUR 8,500 by no later than 30 April 2018.
3. After a previous default notice dated 13 June 2018, on 20 July 2018, the Claimant put the Respondent in default of payment of EUR 8,500, amount corresponding to the second instalment established in the termination agreement due on 30 April 2018, setting a time limit expiring on 31 July 2018 in order to remedy the default.
4. On 5 September 2018 and completed on 18 September 2018, the Claimant lodged a claim against the Respondent in front of FIFA asking that the Respondent be ordered to pay to him the overdue payables in the total amount of EUR 8,500 corresponding to the second instalment due on 30 April 2018, in accordance with the termination agreement.
5. According to the Claimant, the Respondent only paid the first instalment established in the termination agreement.
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 5 September 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 5 September 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 noted that the Claimant and the Respondent signed an employment contract valid as from 5 July 2017 until 30 June 2020.
6. Subsequently, the DRC judge acknowledged that on 27 January 2018, the Claimant and the Respondent signed a termination agreement by means of which the Respondent undertook the obligation to pay the Claimant the amount of EUR 17,000, payable in two instalments of EUR 8,500, each, due on 30 March 2018 and 30 April 2018, respectively.
7. It was duly noted by the DRC judge that 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 EUR 8,500 corresponding to the second instalment established in the termination agreement due on 30 April 2018.
8. In this regard, the DRC judge observed that, according to the Claimant the Respondent only paid the first instalment established in the termination agreement, due on 30 March 2018.
9. In this context, the DRC judge took particular note of the fact that after a previous default notice dated 13 June 2018, on 20 July 2018, the Claimant put the Respondent in default of payment of the aforementioned amount, setting a time limit expiring on 31 July 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. In continuation, 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 termination agreement provided by the Claimant, the Respondent was obliged to pay to the Claimant the total amount of EUR 17,000, payable in two instalments of EUR 8,500 each, on 30 March 2018 and 30 April 2018, respectively.
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 the payment in the amount of EUR 8,500, corresponding to the second instalment established in the termination agreement, due on 30 April 2018.
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 the overdue payable in the total amount of EUR 8,500.
18. In addition to that, 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.

19. 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 EUR 8,500, the DRC judge regarded a fine amounting to CHF 1,000 as appropriate and hence decided to impose said fine on the Respondent.
20. In this connection, the DRC judge wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to 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.
2. The Respondent, Club C, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the overdue payable in the amount of EUR 8,500.
3. In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and 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 1,000. 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
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1012 Lausanne
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For the DRC judge:

Omar Ongaro
Football Regulatory Director

Encl: CAS directives