Decision of the Dispute Resolution Chamber

passed by way of circulars on 19 February 2019,

in the following composition:

Geoff Thompson (England), Chairman
Philippe Diallo (France), member
Jon Newman (USA), member

on the claim presented by the player,

Player A, Country B,

as *Claimant*

against the club,

Club C, Counrty D,

as *Respondent*

regarding an employment-related dispute
between the parties in connection with overdue payables

I. Facts of the case

1. On 31 January 2018, after having entered into a *"pre-agreement"*, 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 the date of signature until 31 May 2018.

2. In accordance with the employment contract, the Respondent undertook to pay to the Claimant 5 monthly instalments of EUR 180,000 each, falling due on 28 February 2018, 30 March 2018, 30 April 2018, 30 May 2018, and 30 June 2018, respectively, thus in total the amount of EUR 900,000. In addition, the Claimant was entitled to EUR 5,000 per season covering the benefits of a car, apartment and flight tickets.

3. According to the *"Special Provisions"* under art. 3 of the employment contract, in case of non-payment for 90 days, the Claimant shall notify the Respondent in writing and grant 7 days for payment. In the event of non-payment, the Claimant had the right to terminate the contract with just cause.

4. Furthermore, according to the *"Special Provisions"* under art. 3 of the employment contract, in the event of complaints, the Claimant had to follow an internal procedure within different levels of the Respondent.

5. By correspondence dated 18 June 2018, the Claimant put the Respondent in default of payment of EUR 440,000 relating to the payments due as from 30 March 2018 until and including 30 May 2018 in accordance with the employment contract, setting a 10 days' time limit in order to remedy the default.

6. On 17 August 2018, and completed on 9 September 2018, the Claimant lodged a claim against the Respondent in front of FIFA maintaining that the Respondent failed to pay the total amount of EUR 620,000 out of the aforementioned total of EUR 900,000 due to him in accordance with the employment contract.

7. On 26 November 2018, the Claimant amended his claim following a payment by the Respondent on 6 September 2018, asking that the Respondent be ordered to pay to him overdue payables in the amount of EUR 540,000 corresponding to the full instalments for April, May, and June 2018, highlighting that the club had only paid him EUR 360,000 in total.

8. The Claimant further asked to be awarded interest of 5% *p.a.* as of the respective due dates.

9. In reply to the claim, the Respondent held that the Claimant had not followed the complaint procedure set out in the employment contract and that, therefore, he had no right to lodge a claim in front of the Dispute Resolution Chamber.

10. In addition, the Respondent stressed that the *"May 2018"* instalment had not been overdue when the Claimant sent his default notice to it and that, therefore, he has no right to claim that salary.

11. In support of its position, the Respondent presented several banking documents in their original version along with a translation and asked that the Claimant's claim be dismissed.

12. In his replica, the Claimant held that the Respondent presented misleading documentation in its defence, highlighting, *inter alia,* that an amount of EUR 5,000, which appears in the documents presented, was paid in relation to the Claimant's contractual fringe benefits payment and that an amount of EUR 40,000 was not paid to him and has no relation to the employment relationship between the parties. Consequently, the Claimant insisted that the amount of EUR 540,000 remains outstanding in relation to the monthly instalments and rejected the various other arguments put forward by the Respondent in its defence.

13. In its duplica, the Respondent reiterated its argumentation and held that the employment contract contains no provision relating to fringe benefits.

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 hand. In this respect, it took note that the present matter was submitted to FIFA on 17 August 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 members of the Chamber referred to art. 3 par. 1 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), 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. At this stage, the DRC recalled that according to the Respondent, the Claimant had no right to lodge a claim in front of the DRC, since he had not followed the complaint procedure set out in the employment contract (cf. number I./4. above). In this regard, the members of the Chamber wished to emphasise that the contractual clause referred to by the Respondent in this respect can by no means be considered a jurisdiction clause and, thus, had to reject such position of the Respondent.

4. Having said that, 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 par. 2 of the Regulations on the Status and Transfer of Players (edition 2018), and considering that the present claim was lodged on 17 August 2018, the 2018 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

5. 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 documentation on file. However, the DRC 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.

6. Having said this, the DRC acknowledged that the Claimant and the Respondent signed an employment contract valid as from 31 January 2018 until 31 May 2018, in accordance with which the Claimant was entitled to receive from the Respondent 5 monthly payments of EUR 180,000 each, falling due on 28 February 2018, 30 March 2018, 30 April 2018, 30 May 2018, and 30 June 2018, respectively, as well as the amount of EUR 5,000 covering the benefits of a car, apartment and flight tickets.

7. As regards the due dates for payment, the Chamber wished to emphasise that the 90 days' period of time set out in the *"Special Provisions"* under art. 3 of the employment contract is related to the right of the Claimant to terminate the contract and shall not be considered applicable in order to determine the due dates of payment of the Claimant's contractual dues, in other words, this *"special provision"* shall not be considered a *"prima facie contractual basis"* as referred to in art. 12bis par. 2 of the Regulations.

8. 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 540,000 corresponding to the monthly instalments due on 30 April, 30 May, and 30 June 2018.

9. In this context, the DRC took particular note of the fact that, on 18 June 2018, the Claimant put the Respondent in default of payment of the amount of EUR 440,000

relating to payments due as from 30 March until 30 May 2018, setting a 10 days' time limit in order to remedy the default.

10. Consequently, the DRC 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 took into account that the Respondent, for its part, held that the claim should be dismissed referring *inter alia* to the payments it alleged having made to the Claimant.

12. After careful study of the documentation presented by the Respondent in its defence, the DRC noted that the total amount of EUR 360,000 only is related to payments due to the Claimant in relation to the contractual monthly instalments. The Chamber agreed with the Claimant that 2 receipts totalling EUR 5,000 are related to the contractual fringe benefits payment and that the receipt for the amount of EUR 40,000 shows a payment order to the benefit of a sports management company.

13. Consequently, the DRC decided to reject the argumentation put forward by the Respondent in its defence.

14. On account of the aforementioned considerations, the DRC established that the Respondent failed to remit the Claimant's remuneration in the total amount of EUR 540,000 corresponding to monthly instalments due on 30 April, 30 May, and 30 June 2018.

15. In addition, bearing in mind the considerations under numbers II./9. and II./10. above, the DRC established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.

16. Furthermore, the DRC decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant the total amount of EUR 540,000.

17. In addition, taking into consideration the Claimant's claim, the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* on each of the relevant instalments as of the day following the day on which the respective instalments fell due.

18. In this context and for the sake of good order, the DRC highlighted that in light of the prerequisites set out in art. 12bis par. 3 of the Regulations, only the outstanding

amount of EUR 180,000 in connection with Claimant's claim relating to the 30 April 2018 instalment is considered to fall within the scope of art. 12bis of the Regulations.

19. In continuation, taking into account the consideration under number II./15. above, the DRC 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. Along these lines, the DRC established that in virtue of art. 12bis par. 4 of the Regulations it has competence to impose sanctions on the Respondent. In this context, the DRC highlighted that, on 12 February 2019, the Respondent had already been found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis and with the Respondent having responded to the relevant claim, as a result of which a warning had been imposed on the Respondent by the DRC judge.

21. Moreover, the DRC referred to art. 12bis par. 6 of the Regulations, which establishes that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty.

22. Bearing in mind that the Respondent has replied to the claim of the Claimant as well as the considerations under numbers II./20. and II./21. above, the DRC decided to impose a reprimand on the Respondent in accordance with art. 12bis par. 4 lit. b) of the Regulations.

III. Decision of the Dispute Resolution Chamber

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 amount of EUR 540,000 plus interest at the rate of 5% *p.a.* until the date of effective payment as follows:

   a. 5% *p.a.* on the amount of EUR 180,000 as from 1 May 2018;
   b. 5% *p.a.* on the amount of EUR 180,000 as from 31 May 2018;
   c. 5% *p.a.* on the amount of EUR 180,000 as from 1 July 2018.

3. In the event that the amount due to the Claimant, plus interest, 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 of every payment received.

5. A reprimand is imposed on the Respondent.

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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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For the Dispute Resolution Chamber:

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Encl: CAS directives