

Decision of the Dispute Resolution Chamber (DRC) judge

passed on 28 January 2019,

by **Jon Newman** (USA), 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 15 November 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 (hereinafter: *the contract*) valid as from 15 November 2017 until 30 June 2018.
2. In accordance with the contract, the Respondent undertook to pay to the Claimant "*the gross annual amount of EUR 10,000*". The contract provides that "*in case of provision of an annual sum, the [Respondent] undertakes to pay to the [Claimant] 10 monthly instalments of equal amount with the reference sports season. [...] The [Respondent] undertakes to pay the related amounts at the end of the month of accrual [...]*".
3. By correspondence dated 12 September 2018, the Claimant put the Respondent in default of payment of EUR 6,000 setting a 10 days' time limit in order to remedy the default.
4. On 29 September 2018, the Claimant lodged a claim against the Respondent in front of FIFA asking that the Respondent be ordered to pay to him overdue payables in the amount of EUR 6,000. The Claimant argued that he received only EUR 4,000 from the Respondent out of the EUR 10,000 due under the contract.
5. The Claimant further asks to be awarded interest of 5% *p.a.* as follows:
 - On the amount of EUR 2,000 as from 1 April 2018;
 - On the amount of EUR 2,000 as from 1 May 2018;
 - On the amount of EUR 2,000 as from 1 June 2018.
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 29 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 29 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 acknowledged that the Claimant and the Respondent signed an employment contract valid as from 15 November 2017 until 30 June 2018, in accordance with which the Claimant was entitled to receive from the Respondent, *inter alia*, "the gross annual amount of EUR 10,000". The DRC judge further took note that the contract provided that "*in case of provision of an annual sum, the [Respondent] undertakes to pay to the [Claimant] 10 monthly instalments of equal amount with the reference sports season. [...] The [Respondent] undertakes to pay the related amounts at the end of the month of accrual [...]*".
7. As established before, the DRC Judge duly took note that the Claimant lodged a claim against the Respondent in front of FIFA on 29 September 2018, maintaining that the Respondent has overdue payables towards him in the total amount of EUR 6,000 and further asks to be awarded interest of 5% *p.a.* as follows:
 - On the amount of EUR 2,000 as from 1 April 2018;
 - On the amount of EUR 2,000 as from 1 May 2018;
 - On the amount of EUR 2,000 as from 1 June 2018.
6. In this context, the DRC judge took particular note of the fact that, on 12 September 2018, the Claimant put the Respondent in default of payment of the aforementioned amount, setting a time limit of 10 days in order to remedy the default.

7. 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).
8. Subsequently, 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.
9. 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.
10. Having said this, the DRC judge acknowledged that, in accordance with the employment contract provided by the Claimant, the Respondent was obliged to pay to the Claimant the total amount of EUR 10,000.
11. 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.
12. On account of the aforementioned considerations, the DRC judge established that the Respondent failed to remit the Claimant's remuneration in the total amount of EUR 6,000.
13. 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.
14. 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 overdue payables in the total amount of EUR 6,000.
15. In addition, taking into account the constant practice of the Dispute Resolution Chamber and since the respective due dates could not be established with certainty from the contract, the DRC judge decided that the Respondent must pay to the Claimant interest of 5% *p.a.* as of the end date of the contract, *i.e.* 1 July 2018, until the date of effective payment.
16. In continuation, taking into account the consideration under number II./13 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.

17. The DRC judge established that in virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. Therefore, 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 6,000, the DRC judge regarded a fine amounting to CHF 1,000 as appropriate and hence decided to impose said fine on the Respondent.
18. In this respect, 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

II. Decision of the DRC judge

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, overdue payables in the amount of EUR 6,000, plus interest at the rate of 5% *p.a.* as from 1 July 2018 until the date of effective payment.
3. In the event that the amount due to the Claimant 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 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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e-mail: info@tas-cas.org
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For the DRC judge:

Omar Ongaro
Football Regulatory Director

Encl: CAS directives