

Decision of the Dispute Resolution Chamber

passed by way of circulars on 31 January 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, Country D

as Respondent

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

I. Facts of the case

1. On 4 February 2015, 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 1 February 2015 until 31 December 2017.
2. In accordance with art. 5 "*part 2 & 3*" of the employment contract, the Respondent undertook to pay to the Claimant, *inter alia*, a monthly salary of USD 80,000 as from March 2016 until February 2017, payable on the last day of each respective month.
3. By correspondence dated 26 October 2018, the Claimant put the Respondent in default of payment of USD 84,000 with regard to the December 2016 salary and of USD 80,000 with regard to the January 2017 salary, setting a 10 days' time limit in order to remedy the default. The Claimant further held that, should the Respondent remain in default, he will request "*in addition to the principal amount, application of interests on default (which are near 10% at this point)*".
4. On 23 November 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 USD 174,328, which was detailed as follows:
 - a. USD 80,000, corresponding to the December 2016 salary;
 - b. USD 7,328, corresponding to "*9.16% interest (5% per annum from 31 December 2016 to 01 November 2018)*";
 - c. USD 80,000, corresponding to the January 2017 salary;
 - d. USD 7,000, corresponding to "*8.75% interest (5% per annum from 31 January 2017 to 01 November 2018)*".
5. In addition to the aforementioned interest, the Claimant requested to be awarded interest of 5% *p.a.* on the amount of USD 160,000 as of 1 November 2018 until the date of effective payment.
6. In spite of having been invited to do so, the Respondent has not replied to the claim.

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 23 November 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 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) it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between Player of Country B and a Club of Country D.
3. Furthermore, the DRC 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 23 November 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 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 the 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.
5. Having said this, the Chamber acknowledged that, on 4 February 2015, the Claimant and the Respondent signed an employment contract valid as from 1 February 2015 until 31 December 2017, pursuant to which the Claimant was entitled to receive, *inter alia*, a monthly remuneration of USD 80,000 as from March 2016 until February 2017, payable on the last day of each respective month.
6. 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 USD 174,328 corresponding to the following:
 - a. USD 80,000, in relation to the December 2016 salary;
 - b. USD 7,328, corresponding to “9.16% interest (5% per annum from 31 December 2016 to 01 November 2018)”.
 - c. USD 80,000, corresponding to the January 2017 salary;
 - d. USD 7,000, corresponding to “8.75% interest (5% per annum from 31 January 2017 to 01 November 2018)”.
7. In this context, the DRC took particular note of the fact that, on 26 October 2018, the Claimant put the Respondent in default of payment of the amounts of USD 84,000 and USD 80,000 in relation to his salary for December 2016 and January 2017, respectively, setting a 10 days’ time limit in order to remedy the default.

8. Consequently, the Chamber 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).
9. Subsequently, the DRC observed that the Respondent, in spite of having been invited to do so, had not presented its reply to the claim of the Claimant. The DRC considered that, in this way, the Respondent renounced its right to defence and accepted the allegations of the Claimant.
10. Furthermore, as a consequence of the aforementioned consideration, the members of the Chamber concurred that in accordance with art. 9 par. 3 of the Procedural Rules, they shall take a decision upon the basis of the documents on file, in other words, upon the statements and documents presented by the Claimant.
11. Having said this, the DRC recalled that, in accordance with the employment contract provided by the Claimant, the Respondent was obliged to pay to the Claimant, *inter alia*, a monthly salary of USD 80,000 as from March 2016 until February 2017, payable on the last day of each respective month.
12. Taking into account the documentation presented by the Claimant in support of his petition, the DRC concluded that the Claimant had substantiated his claim pertaining to these overdue payables with sufficient documentary evidence.
13. On account of the aforementioned considerations, the DRC established that the Respondent failed to remit the Claimant's salary in the total amount of USD 160,000 corresponding to the salaries of December 2016 and January 2017.
14. In addition, the DRC established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
15. Consequently, the DRC 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 amount of USD 160,000.
16. In addition, with respect to the Claimant's request for payment of interest and taking into account the constant practice of the Dispute Resolution Chamber, the DRC decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on each of the relevant payment(s) as of the day following the day on which the relevant payment(s) fell due, until the date of effective payment.

17. Moreover, the Chamber decided that any further request filed by the Claimant is rejected.
18. In continuation, taking into account the consideration under number II./14. above, the Chamber 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 established that by virtue of art. 12bis par. 4 of the Regulations it 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, the DRC 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 USD 160,000, the DRC regarded a fine amounting to CHF 15,000 as appropriate and hence decided to impose said fine on the Respondent.
20. In this connection, the DRC 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 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, overdue payables in the amount of USD 160,000, 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 USD 80,000 as from 1 January 2017;
 - b. 5% *p.a.* on the amount of USD 80,000 as from 1 February 2017.
3. In the event that the amount plus interest 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. 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 DRC of every payment received.

6. The Respondent is ordered to pay a fine in the amount of CHF 15,000. 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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For the Dispute Resolution Chamber:

Omar Ongaro
Football Regulatory Director

Encl. CAS directives