Decision of the

Dispute Resolution Chamber

passed on 9 April 2020,

in the following composition:

Geoff Thompson (England)
Roy Vermeer (The Netherlands)
Daan de Jong (The Netherlands)

on the claim presented by the player,

Anderson Dos Santos, Brazil
represented by Mr Dimas Duarte de Almeida Botelho & Mr Joao Paulo Ferreira De Lima

as *Claimant*

against the club,

Suphanburi FC, Thailand
represented by Mr Menno Teunissen

as *Respondent*

regarding an employment-related dispute arisen between the parties

I. Facts of the case

1. On 1 May 2018, the Brazilian player, Anderson Dos Santos (hereinafter: *the Claimant* or *the player*), and the Thai club, Suphanburi Football Club (hereinafter: *the Respondent* or *the club*) (hereinafter jointly referred to as *the parties*), concluded an employment contract (hereinafter: *the contract*) valid as from 29 December 2018 until 29 December 2019.

2. Article 5.1 of the contract provided the following financial conditions:

   "The Club shall pay [the player] *a total salary of 400,000 USD (…) per annum net after withholding tax. Of this sum 50,000.00 USD (…) will be payable on the singing date.*
   A monthly salary of 29,167 USD (…) net after withholding tax due each month on the last business day and to be paid in THAI BAHTS using the exchange rate effective five business days before the end of the month".

3. On 1 July 2019, the parties signed a termination agreement (hereinafter: *the termination agreement*), mutually ending their contractual relationship upon a payment of USD 87,501, payable in three equal instalments, as follows:

   "By way of compensation for the early termination of the contract and [the player's] *employment with the club, the club shall pay to* [the player] *a total gross sum of USD 87,501 (…referred to as the "Termination Payment"). The Termination Payment shall be made by way of instalment of 3 (Three) months. The Player agree on the following payment schedule:*

   - USD 29,167 (…) to be paid on 31st July 2019;
   - USD 29,167 (…) to be paid on 30th August 2019;
   - USD 29,167 (…) to be paid on 30th September 2019".

4. Moreover, the termination agreement stipulated as well that :

   "Save for the Termination Payment you shall be entitled to no further sums from the Club, including but without limitation any sums in respect of remuneration, singing-on fees, bonuses, or any other sums due pursuant to the contract or any applicable bonus schedule and you shall have no claims against the club or any nature whatsoever in respect of your employment with the Club and/or its termination including but without limitation whether under the contract, the regulations of the national Football Association, FIFA or otherwise. To the extent you do have any such claims whether known or unknown at the date hereof, you hereby waive them unconditionally.

5. Furthermore, the parties agreed upon the following as an annex to the termination agreement :

"Dear [the club]

I, [the player] *a Brazilian national bearing the passport number (…), confirm my understanding and agreement of the terms and conditions of this letter.*
I further confirm that following termination of the contract, other than in respect of the Termination Payment, I shall be entitled to no further sums from the Club, including but without limitation any sums in respect of remuneration, singing-on fees, bonuses, or any other sums due pursuant to the contract or any applicable bonus schedule and I shall have no claims against the club or any nature whatsoever in respect of my employment with the Club and/or its termination including but without limitation whether under the contract, the regulations of the national Football Association, FIFA or otherwise. To the extent I do have any such claims whether known or unknown at the date hereof, I hereby waive them unconditionally."

6. On 9 September 2019, the player acknowledged the payment of the first instalment, *i.e.* USD 29,167.

7. Following this, maintaining that the club omitted to pay the remaining installments, the player sent a letter to the club on 18 November 2019 *"to report breach (cancellation) of the Early Termination Agreement* (…) *because* [the club] *has paid only one of the three compensatory instalments established between the parties as a condition for the early termination of the employment contract* […].

8. In addition, the player requested *"within 10 days, the payment of the 5 (five) remaining monthly instalments of the Employment Agreement"*.

9. On 3 January 2020, the player lodged a claim for breach of contract against the club in front of FIFA, requesting the following monies:

   i. USD 145,835 as five monthly salaries as from August until December 2019, in accordance with the contract, plus interest at the rate of 5% *p.a.* as from the due dates ;

   Or, in the alternative:

   ii. USD 58,338 as *"the two remaining monthly salary installments"*, in accordance with the termination agreement, plus interest at the rate of 5% *p.a.* as from the due dates ;

   In any case :

iii. USD 29,167 as an *"indemnity for moral damages"* corresponding to one monthly salary, plus interest at the rate of 5% *p.a.* as from the final decision of the DRC.

10. In his claim, the player explained that the club's non-compliance with the termination agreement made it *"evident that* [the club] *was abusively engaging in intent to seduce and therefore forcing* [the player] to *sign the Early Termination Agreement of his Employment Contract, which constitutes just cause for termination of both the Early Termination Agreement of the Employment Contract and the Employment Contract."*

11. In its reply to the claim, the club contested FIFA's competence deeming that, in application of the annex of the termination agreement, said document was to be considered in its opinion as a waiver according to which the player had explicitly and unconditionally waived his right to submit any claim against the club with respect to his employment or its undersigned termination agreement. In continuation, the club held that the player could not contest its content as he enclosed said document to his claim in front of FIFA.

12. Consequently, the club referred to the aforementioned provision of the termination agreement, deeming that FIFA was not competent to decide on the present matter and the claim should be deemed as inadmissible.

13. As to the substance, the club held that, after having signed the termination agreement, the player had requested to be paid part of the sums in cash and it further alleged that, upon agreement between the parties, the following amounts were paid by the club to the player:

- Thailand Baht (THB) 100,000 on 31 July 2019 via bank transfer;
- THB 773,855 on 31 July 2019 in cash;
- THB 864,121 on 9 September 2019 via bank transfer.

14. Furthermore, the club argued that those payments equalled "*the first two tranches of the termination payment*" and that *"the absolute maximum amount of USD 29,167 is still due*".

15. In addition, the club also mentioned that no amount under the employment contract could be claimed and that there was no abusive conduct on the part of the club.

16. Finally, the club requested any demand for sportive sanctions to be entirely dismissed and that the player be ordered to bear the legal fees and costs incurred by it in relation to the present proceedings.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *DRC* or *Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber took note that the present matter was submitted to FIFA on 3 January 2020. Consequently, the 2019 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 (March 2020 edition) the Dispute Resolution Chamber shall adjudicate on employment-related disputes between a club and a player that have an international dimension.

3. As a consequence, the Dispute Resolution Chamber would, in principle, be competent to decide on the present litigation which involves a Brazilian player and a Thai club regarding an employment-related dispute.

4. However, the Chamber acknowledged that the Respondent contested the competence of FIFA's deciding bodies on the basis of the annex of the termination agreement, *i.e.* the alleged waiver, sustaining that the Claimant had explicitly and unconditionally waived his right to submit any claim against the Respondent with respect to his employment or its undersigned termination agreement.

5. On the other hand, the Chamber understood that the Claimant referred to the competence of the FIFA DRC to adjudicate in and on the claim lodged by him against the Respondent.

6. Taking into account all the above, the Chamber referred to the well-established jurisprudence of the Dispute Resolution Chamber according to which, in general, in employment-related disputes between a club and a player that have an international dimension, *i.e.* the parties do not belong to the same country, both parties were entitled to refer the dispute to FIFA's bodies, unless an independent arbitration tribunal respecting the principle of equal representation of players and clubs with an independent chairman has been established at national level.

7. In this respect, the Chamber deemed it vital to outline that one of the basic conditions that needs to be met in order to establish that another organ than the DRC is competent to settle an employment-related dispute between a club and a player of an international dimension, is that the jurisdiction of the relevant

national arbitration tribunal or national court derives from a clear reference in the contractual document at the basis of the claim.

8. Therefore, while analysing whether it was competent to hear the present matter, the Dispute Resolution Chamber considered that it should, first and foremost, analyse whether the annex of the termination agreement contained a clear jurisdiction clause.

9. In this respect, the members of the Chamber acknowledged and underlined that in the case at hand, the annex of the termination agreement, *i.e.* the alleged waiver, did not contain any jurisdiction clause of any sort.

10. Consequently, and considering that no arbitration clause was included in the relevant document, the Chamber established that the Respondent's objection towards the competence of FIFA to deal with the present matter has to be rejected, and that the Dispute Resolution Chamber is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.

11. In continuation, the Chamber analyzed 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 Chamber referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (March 2020 edition) and, on the other hand, to the fact that the present claim was lodged on 3 January 2020. Therefore, the Dispute Resolution Chamber concluded that the January 2020 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.

12. The competence of the Chamber and the applicable regulations having been established, and entering into the substance of the matter, the Chamber continued by acknowledging the above-mentioned facts as well as the documentation contained in the file. 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.

13. First of all, the members of the Chamber recalled that, on 1 May 2018, the parties concluded an employment contract, valid as from 29 December 2018 until 29 December 2019, according to which the Claimant, *inter alia*, was entitled to a total net amount of USD 400,000, composed of a sign-on fee amounting to USD 50,000 and monthly salaries amounting to USD 29,167 each.

14. In continuation, the DRC noted that on 1 July 2019, the parties signed a termination agreement by means of which they mutually ended their contractual relationship upon a payment of USD 87,501, payable in three equal instalments of

USD 29,167 each, payable respectively on 31 July 2019, 30 August 2019 and 30 September 2019.

15. At this point, the DRC recalled that, in his claim, the Claimant argued that this case was a breach of contract, and, consequently, he requested amounts under the employment contract or, alternatively, the termination agreement.

16. Having the above in mind, since the parties signed the termination agreement to settle the employment contract and that no specific clause had been inserted in the termination agreement referring to a retroactive application of the contract in case of violation of the terms of the termination agreement, the members of the Chamber were of the opinion to only refer to the termination agreement and its amounts, said document being considered to be at the basis of the claim. As such, the Chamber concluded that the present matter was a case of outstanding remuneration only based on the termination agreement.

17. In continuation, the Chamber proceeded with an analysis of the circumstances surrounding the present matter, the parties' arguments as well as the documentation on file, 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.

18. Consequently, the Chamber recalled that the Claimant had acknowledged the payment of the first instalment on 9 September 2019, *i.e.* USD 29,167, and that he requested as such USD 58,338 as the two remaining installments in accordance with the termination agreement, plus interest at the rate of 5% *p.a.* as from the due dates. In addition, the DRC took note of the Claimant's additional request to be awarded as well USD 29,167 as an *"indemnity for moral damages"*, plus interest at the rate of 5% *p.a.* as from the final decision of the DRC.

19. Subsequently, the DRC observed that, for its part and as to the substance, the Respondent held that the Claimant had already been paid a total amount of THB 1,737,976, respectively : THB 100,000 on 31 July 2019 via bank transfer (approx. USD 3,240), THB 773,855 on 31 July 2019 in cash (approx. USD 25,000), and THB 864,121 on 9 September 2019 via bank transfer (approx. USD 29,167). Therefore, in its opinion and considering said alleged payments, *"the absolute maximum amount of USD 29,167 is still due*".

20. In respect to the above, the Chamber took note that the Respondent submitted evidence as to three alleged proofs of payment, however not translated in any of FIFA's official languages. At this point, the Chamber first recalled that, in accordance with art. 9 par. 1 lit. e) of the Procedural Rules, all documentation provided in the context of a dispute in front of FIFA should be presented in the original version and, if applicable, translated into one of the official FIFA languages (English, French, Spanish and German). Therefore, bearing in mind the Chamber's constant jurisprudence in this regard and in application of the aforementioned provision as well as the principle of burden of proof under art. 12 par. 3 of the Procedural Rules, the Chamber decided to disregard said evidence.

21. Having said this, the DRC recalled once more that the Claimant acknowledged the payment of the first instalment on 9 September 2019, *i.e.* USD 29,167.

22. On account of the aforementioned considerations, the DRC established that the Respondent had failed to pay to the Claimant the amounts corresponding to the second and the third instalments as agreed upon the termination agreement, totalling USD 58,334. Consequently, no evidence to the contrary having been provided by the Respondent, the DRC concluded that, in accordance with the general legal principle of *"pacta sunt servanda",* the Respondent is liable to pay the Claimant the amount of USD 58,334.

23. In continuation and with regard to the Claimant's request for interest, the DRC decided that the Claimant is entitled to receive interest at the rate of 5% *p.a.* on the outstanding amounts until the date of effective payment, as follows:

    i. 5% as of 1 September 2019 on the amount of USD 29,167;
    ii. 5% as of 1 October 2019 on the amount of USD 29,167.

24. In continuation, the Chamber recalled the Claimant's request to be awarded compensated for moral damages in the amount of USD 29,167, plus interest, and observed in this respect that said request had no contractual basis nor was it anyhow substantiated. Therefore, the Chamber rejected said request.

25. Consequently, the DRC concluded its deliberations by rejecting any further claim of the Claimant.

26. Furthermore, taking into account the consideration under number II./11. above, the Chamber referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.

27. In this regard, the Chamber established that, in virtue of the aforementioned provision, it has competence to impose a sanction on the Respondent. More in particular, the DRC pointed out that, against clubs, the sanction shall consist in a ban from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods.

28. Therefore, bearing in mind the above, the DRC decided that, in the event that the Respondent does not pay the amount due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become

effective on the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.

29. Finally, the Chamber recalled that the above-mentioned sanction will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the Regulations.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Anderson Dos Santos, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, Suphanburi Football Club, has to pay to the Claimant outstanding remuneration in the amount of USD 58,334 plus 5% interest *p.a.* until the date of effective payment as follows:

   a. 5% as of 1 September 2019 on the amount of USD 29,167;
   b. 5% as of 1 October 2019 on the amount of USD 29,167

4. Any further claim lodged by the Claimant is rejected.

5. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amounts mentioned under point 3 above.

6. The Respondent shall provide evidence of payment of the due amounts in accordance with point 3 above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).

7. In the event that the amounts due plus interest in accordance with point 3 above are not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

8. The ban mentioned in point 7 above will be lifted immediately and prior to its complete serving, once the due amounts are paid.

9. In the event that the aforementioned sum plus interest is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

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Note related to the publication:

The FIFA administration may publish decisions issued by the Players' Status Committee or the DRC. Where such decisions contain confidential information, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

Note relating to the appeal procedure:

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. 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.

The full address and contact numbers of the CAS are the following:

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