

## **Decision of the Dispute Resolution Chamber**

passed on 29 July 2021

regarding an employment-related dispute concerning the player **Duvier Orlando Riascos Barahona**

### **COMPOSITION:**

**Clifford J. Hendel** (USA & France), Deputy Chairman

**Angela Collins** (Australia), member

**Stefano La Porta** (Italia), member

### **CLAIMANT:**

**Duvier Orlando Riascos Barahona, Colombia**

Represented by Ercan Sevdimbaz

### **RESPONDENT:**

**Dalian Yifang, China PR**

## I. FACTS OF THE CASE

1. On 1 July 2018, the Colombian player, Duvier Orlando Riascos Barahona (hereinafter: *Claimant*), and the Chinese club, Dalian Yifang (hereinafter: *Respondent*) signed an employment contract valid as from said date until 31 December 2019.
2. On 23 January 2019, the Parties concluded a Termination Agreement, by means of which, the Respondent undertook to pay the Claimant:
  - USD 1,000,000 ( ) on 28 March 2019
  - USD 1,000,000 on 30 May 2019
3. With letter dated 27 September 2019, the Claimant put the Respondent in default of USD 600,000 as outstanding residual value of the second instalment originally due on 30 May 2019 (i.e. USD 1,000,000) and granted a deadline of 18 days for the latter to remedy its default.

## II. PROCEEDINGS BEFORE FIFA

4. On 5 April 2021, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### a. The claim of the Claimant

5. In its claim, the Claimant highlighted that although more than 22 months had passed, the outstanding claimed amount remained overdue.
6. In the Claimant's view, such protracted delay by the Respondent would clearly constitute evidence of the latter's bad faith.
7. The request for relief of the Claimant, therefore, was the following:
  - To be awarded USD 600,000, plus 5% interest *p.a.* as of 30 May 2019

### b. Position of the Respondent

8. On its reply to the Claim, the Respondent objected to have already paid all the outstanding amounts due to the Claimant.

9. In this context, the Respondent argued that on 25 February 2019, the Parties signed a Supplementary Agreement, by means of which the Termination Agreement previously signed was amended.
10. It shall be noted that according to the Respondent, said agreement would clearly refer any potential dispute to the CAS jurisdiction, hence FIFA DRC competence shall be excluded.
11. As to the substance, the Respondent alleged that pursuant to the above-mentioned Supplementary Agreement, the original termination fee of USD 2,000,000 had been reduced to USD 1,000,000, and the respective two instalments of USD 1,000,000 were accordingly reduced to USD 500,000 each (the expiry date remaining the same)
12. In particular, the Respondent alleged to have first paid USD 481,342.58 USD to the Claimant on 8 March 2019, respectively split in two instalments of USD 250,000 and USD 231,342.58, and that the amount of USD 18,657.42 was deducted from the total of USD 500,000 as flight ticket expenses incurred by the Claimant' son.
13. Secondly, the Respondent alleged to have paid also the second instalment of USD 500,000, namely on 26 April 2019, by doing so extinguishing all its financial obligations towards the Claimant

#### **c. Claimant's replica to the Respondent' submission**

14. In replica to the Respondent's allegation concerning the existence of a Supplementary Agreement, the Claimant accused the Respondent of having falsified the Claimant' signature.
15. In order to prove the above, the Claimant submitted copy of different documents presenting the his signature in order to be compared with the one inserted on the alleged Supplementary Agreement.
16. Furthermore, the Claimant submitted copy of his's passport as a proof of the fact that on the date of conclusion of the alleged Supplementary Agreement, he was not staying in China.
17. Questioned upon the alleged payments of the Respondent, the Claimant confirmed that the Respondent paid only the following amounts:
  - USD 250,000 on 31 January 2019
  - USD 250,000 on 31 March 2019
  - USD 231,342.58 on 31 March 2019
  - USD 500,000 on 30 April 2019

18. Therefore, according to the Claimant only the amount of USD 1,231,342 was paid by the Respondent.
19. Accordingly, the Claimant amended its request for relief, demanding to be awarded the total amount of USD 768,858 plus 5% interest *p.a.* as of 30 May 2019.

#### **d. Duplica of the Respondent**

20. In response to the Claimant's accusation of forgery, the Respondent argued that not only the aforementioned Supplementary Agreement was really signed by Claimant, but also that the latter's Agent was aware of said document.
21. In fact, according to the Respondent, on 28 February 2019 the Chinese Club and the Agency "*Medio Sport Consulting Co. Ltd.*", signed a Commission Agreement, by means of which the Respondent undertook to pay the latter USD 1,000,000 as remuneration for having acted as intermediary, *inter alia*, in the conclusion of the Supplementary Agreement that led to the reduction of the previous Termination Agreement dated 23 January 2019.
22. Moreover, with regard to the amendment of the request for relief by the Claimant as due to a re-calculation of the amounts paid by the Respondent, the latter argued that the payment of USD 250,000 realized on 31 January 2019 was exclusively referring to the monthly salary of December 2018.
23. Finally, the Respondent reserved its good faith by alleging that it was the Claimant's Agent to produce the document referred to as Supplementary Agreement, hence the Respondent trusted in the authenticity of the Claimant's signature and it would have no fault in case of effective forgery.

### **III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER**

#### **a. Competence and applicable legal framework**

24. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 5 April 2021 and submitted for decision on 29 July 2021. Taking into account the wording of art. 21 of the January 2021 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
25. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and observed that in accordance with art. 24 par. 1 in combination with art. 22 lit. a) and

- b) of the Regulations on the Status and Transfer of Players (edition February 2021), the Dispute Resolution Chamber would, in principle, be competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Colombian player and a Chinese club.
26. However, the Chamber acknowledged that the Respondent, in view of article 2 of the Supplementary Agreement as allegedly signed by the Parties, contested the competence of FIFA's deciding bodies as, pursuant to said document, the present matter shall be adjudicated by the Court of Arbitration for Sport (CAS) Shanghai Alternative Hearing centre, based in Shanghai, China.
  27. The Chamber further noted that, conversely, the Claimant rejected the position of the Respondent as to FIFA's lack of jurisdiction and argued that the abovementioned Supplementary Agreement has been fabricated by the same Respondent, hence it is a false document and shall be disregarded.
  28. In this context, the Chamber observed that the Claimant disavowed his own signature on the above-mentioned agreement, remarking a clear evidence with the original one as inserted, for example, on the employment agreement dated 1 July 2018.
  29. With the above in mind, the Chamber first of all recalled that, in principle, FIFA DRC is not the competent deciding body that can deal with forgery allegations.
  30. However, the Chamber noted that, according to the Respondent, it was the Claimant's agent who negotiated the terms of the Supplementary Agreement and that the same agent allegedly provided them with a copy signed by the Claimant.
  31. Moreover, according to said agreement, the agent would have been entitled to a commission of EUR 1,000,000, while the Claimant would have waived a significant part of the outstanding remuneration.
  32. In this respect, the Chamber remarked that the Respondent failed to provide decisive documentary evidence, on the basis of which it could be concluded that said document has been effectively signed by the Claimant and not by his agent.
  33. In particular, the Chamber observed that the Termination Agreement dated 23 January 2019 included the Claimant's fingerprint, whereas the supplementary agreement did not.
  34. Furthermore, it appears evident to the Chamber the difference between the signature of the Claimant inserted in the Supplementary Agreement and the other ones contained in the other documents submitted by the Parties.
  35. In this sense, the DRC concluded that it is not possible to establish with certainty that the Claimant's signature on the Supplementary Agreement is legitimate, hence said document shall be disregarded.

36. Subsequently, and taking into account all the foregoing circumstances as well as the contents of the Termination Agreement, 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 2 of the Regulations on the Status and Transfer of Player (edition February 2021) and considering that the present claim was lodged on 5 April 2021, the aforementioned edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### **b. Burden of proof**

37. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the DRC stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties.
38. In this respect, the Chamber also recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA's judicial bodies may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in TMS.

#### **c. Merits of the dispute**

39. The competence of the DRC and the applicable regulations having been established, the DRC entered into the merits of the dispute. In this respect, the DRC 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.

##### **i. Main legal discussion and considerations**

40. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that, having established that the Supplementary Agreement shall be disregarded, the Termination Agreement dated 23 January 2019 shall be the only document to take into consideration.
41. In this respect, the Chamber noted that according to said agreement, the Respondent undertook to pay a total of USD 2,000,000 to the Claimant - split into two instalments - and that the amount of USD 768,858 claimed as outstanding residual value of the second instalment originally due on 30 May 2019 (i.e. USD 1,000,000) remained uncontested as the Respondent focused exclusively on the aforementioned Supplementary Agreement.

42. Therefore, the abovementioned amount shall be awarded to the Claimant as outstanding remuneration.

### ii. Consequences

43. Having stated the above, the members of the Chamber concluded that the Claimant shall be entitled to USD 768,858 as outstanding fee agreed by termination agreement dated 23 January 2019.
44. Furthermore, in line with the long-standing DRC jurisprudence and as per Claimant's request, an interest of 5% per annum over the awarded amount shall be charged.

### iii. Compliance with monetary decisions

45. Finally, 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.
46. In this regard, the DRC highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
47. Therefore, bearing in mind the above, the DRC decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24bis par. 2, 4, and 7 of the Regulations.
48. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Registration Form, which is attached to the present decision.
49. The DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 8 of the Regulations.

### d. Costs

50. The Chamber referred to article 18 par. 2 of the Procedural Rules, according to which "*DRC proceedings relating to disputes between clubs and players in relation to the maintenance*

*of contractual stability as well as international employment related disputes between a club and a player are free of charge". Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.*

51. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 18 par. 4 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
52. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

#### IV. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, Duvier Orlando Riascos Barahona, is admissible.
2. The claim of the Claimant is accepted.
3. The Respondent, Dalian Yifang, has to pay to the Claimant, the following amount:
  - USD 768,858 as outstanding termination fee plus 5% interest *p.a.* as from 31 May 2019 until the date of effective payment.
4. Full payment (including all applicable interest) shall be made to the bank account set out in the enclosed Bank Account Registration Form.
5. Pursuant to article 24bis of the [Regulations on the Status and Transfer of Players](#) if full payment (including all applicable interest) is not paid **within 45 days** of notification of this decision, the following **consequences** shall apply:
  1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of three entire and consecutive registration periods.
  2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the of the three entire and consecutive registration periods.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance with article 24bis paragraphs 7 and 8 and article 24ter of the [Regulations on the Status and Transfer of Players](#).
7. This decision is rendered without costs.

For the Dispute Resolution Chamber:



**Emilio Garcia Silvero**

Chief Legal & Compliance Officer

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### **NOTE RELATED 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 \(CAS\)](#) within 21 days of receipt of the notification of this decision.

### **NOTE RELATED TO THE PUBLICATION:**

FIFA may [publish](#) this decision. For reasons of confidentiality, 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 Procedural Rules).

### **CONTACT INFORMATION:**

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