

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 15 July 2016,

in the following composition:

Thomas Grimm (Switzerland), Deputy Chairman

Theo van Seggelen (Netherlands), member

Takuya Yamazaki (Japan), member

Mario Gallavotti (Italy), member

Mohamed Al Saikhan (Saudi Arabia), member

on the claim presented by the player,

A, country B,
represented by Mr xxxxxx

as Claimant

against the club,

B, country T,
represented by Mr xxxxxx

as Respondent

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. In August 2013, the player from B, A (hereinafter: *the Claimant*), and the club from T, B (hereinafter: *the Respondent*), concluded an employment contract valid as of 29 August 2013 until 31 May 2016, using the standard form of the Football Federation of T (hereinafter: *the employment contract*). On 26 August 2013, the Claimant and the Respondent concluded a private agreement, by means of which they amended some terms of the employment contract (hereinafter: *the private agreement*).
2. According to the private agreement, the employment contract was valid from 26 August 2013 to 31 May 2016 and the Claimant was entitled, *inter alia*, to the following salary:
 - a) EUR 450,000 for season 2013/2014, payable as follows:
 - EUR 150,000 on 15 September 2013;
 - EUR 300,000 in ten monthly instalments of EUR 30,000 each from September 2013 to June 2014;
 - b) EUR 475,000 for season 2014/2015, payable as follows:
 - EUR 175,000 on 30 August 2014;
 - EUR 300,000 in twelve monthly instalments of EUR 25,000 each from July 2014 to June 2015;
 - c) EUR 500,000 for season 2015/2016, payable as follows:
 - EUR 140,000 on 30 August 2015;
 - EUR 360,000 in ten monthly instalments of EUR 36,000 each from August 2015 to May 2016.
3. The private agreement also provided that the Claimant was entitled to a "*fully furnished house (...) one comfortable car (...) flight tickets, 15,000 euros extra per season will be given to the player additional*".
4. On 2 February 2015, the Respondent addressed a written statement to the Claimant, according to which "*as we agreed with [the Claimant], he is free to go on loan to any club he wants until the end of the football season of 31.05.2015. In this respect we announce that the 3rd club(s) is/are free to make negotiations with the aforementioned player*".
5. On 3 February 2015, the Claimant and the Respondent entered into an agreement according to which, having mutually accepted "*that the [Claimant] will not be fielded during the second half of the season 2014/2015*", they agreed that the Claimant was "*entitled to sign an employment contract with a third Club of his choice on loan basis until 31 June 2015*" and that the Respondent, until the end of season 2014/2015, would pay a salary of EUR 190,000 to the Claimant, as follows:
 - EUR 65,000 on 10 February 2015;
 - EUR 25,000 on 10 March 2015;

- EUR 25,000 on 10 April 2015;
 - EUR 25,000 on 10 May 2015;
 - EUR 25,000 on 10 June 2015;
 - EUR 25,000 on 10 July 2015.
6. According to the same agreement, the Claimant and the Respondent also confirmed that the salary for season 2015/2016 would remain the same as that set out in the private agreement.
 7. On 6 February 2015, the Claimant signed a declaration according to which, in case of loan to a third club, he would accept to have deducted the amount of EUR 7,500 from the last instalment of his salary for season 2014/2015, *i.e.* July 2015. Thus, in case of loan, the Claimant's last monthly salary for season 2014/2015 would be of EUR 17,500.
 8. On 7 February 2015, the Respondent, the Claimant and the third club, V, concluded a contract by means of which the Claimant was transferred on loan to V until 30 June 2015. Furthermore, according to such contract "[the Respondent's] *financial obligations towards the* [Claimant] *under* [the private agreement] (...) *is valid and binding*".
 9. On 21 July 2015, the Claimant put the Respondent in default and granted it a seven days deadline for the payment of the amount of EUR 67,500, corresponding to his salaries of May and June 2015 in the amount of EUR 25,000 each and to his salary of July 2015 in the amount of EUR 17,500. Moreover, the Claimant informed the Respondent that, in case of non-payment within the aforementioned deadline, he would have terminated the employment contract.
 10. On 29 July 2015, the Claimant terminated the employment contract in writing.
 11. On 26 August 2015, the Claimant lodged a claim in front of FIFA against the Respondent for breach of contract, requesting the following:
 - a) EUR 67,500 as outstanding salaries from May 2015 to July 2015, plus interest at the rate of 5% per year as of each due date;
 - b) EUR 515,000 as compensation for the breach of contract, corresponding to the residual value of the employment contract, *i.e.* EUR 500,000 for salaries and EUR 15,000 for accommodation allowance, car and flight tickets, plus interest of 5% per year.
 12. In his claim, the Claimant explained that the Respondent failed to pay his remuneration as from May until June 2015 and that the latter did not reply to his default notice. Moreover, according to the Claimant, the Respondent did not register him with the Football Federation of T (FFT) for the season 2015/2016 "*showing total lack of interest*" in his services.

13. In reply to the claim, the Respondent acknowledged its debt, but also requested the rejection of the Claimant's claim. The Respondent emphasized that the amount claimed was not duly paid allegedly because of the financial difficult conditions of the Respondent, which had been affected by its sporting results, as it had been relegated at the end of season 2014/2015.
14. Moreover, the Respondent asserted that the Claimant acted with bad faith, stressing that it tried to find an amicable settlement, but the Claimant did not answer to any offer from the Respondent and preferred to terminate the employment contract. Furthermore, the respondent considered that the Claimant signed a new employment contract with a new club even before the termination letter was received by the Respondent.
15. In his replica, the Claimant denied having ever been informed of any financial difficulty of the Respondent. The Claimant also rejected the Respondent's allegations and emphasized that he did not receive any reply after he had put the Respondent in default. Finally, the Claimant confirmed that he signed a new employment contract, but only on 1 August 2015, *i.e.* after the termination of the employment contract with the Respondent on 29 July 2015.
16. In its duplica, the Respondent repeated its previous arguments and emphasized again the alleged bad faith of the Claimant, requesting the rejection of the Claimant's claim.
17. Upon request of FIFA, the Claimant informed that he signed a new employment contract with the club, K, valid from 1 August 2015 until 31 May 2016, with a salary of EUR 175,000 payable in ten monthly instalments of the amount of EUR 17,500 each as of 31 August 2015. The Claimant also added that he eventually terminated this contract on 7 December 2015. Then, on 5 January 2016, the Claimant signed a new employment contract with the club, F and valid from 10 January 2016 until 10 June 2016, according to which he was entitled to a total salary of USD 130,000.

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 26 August 2015. Consequently, the edition 2015 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the 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 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of

Players (edition 2016) 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 from B and a club from T.

3. In continuation, 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 Players (edition 2016), and considering that the present claim was lodged on 26 August 2015, the 2015 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance. 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.
4. 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 the documentation submitted by the parties.
5. First, the Chamber noted that the parties entered into an employment contract valid as of 29 August 2013 until 31 May 2016, which was mutually amended by means of the private agreement dated 26 August 2013. The Chamber then noted that such private agreement entitled the Claimant to a salary of EUR 450,000 for season 2013/2014, of EUR 475,000 for season 2014/2015 and of EUR 500,000 for season 2015/2016, plus EUR 15,000 per season for expenses.
6. In this respect, the Chamber took note that, on 7 February 2015, the Claimant was transferred on loan to a third club until the end of season 2014/2015. Moreover, the members of the Chamber noted that the parties agreed that the Respondent would pay to the Claimant the salary provided by the employment contract and the private agreement also during the loan period, but it would deduct the amount of EUR 7,500 from the last instalment of season 2014/2015, *i.e.* July 2015.
7. Furthermore, the DRC acknowledged that it was undisputed that the Claimant put in default the Respondent for the last three monthly salaries of season 2014/2015, corresponding to the amount of EUR 67,500, and thereafter terminated the employment agreement on 29 July 2015.
8. In continuation, the DRC noted that the Claimant alleged that the Respondent breached the employment contract as it failed to pay the outstanding salaries for the months of May, June and July 2015, for the total amount EUR 67,500. Moreover, the Claimant emphasized that Respondent did not reply to his notice of termination and neither registered him with the FFT for the season 2015/2016, "*showing total lack of interest*" in his services. In view of the above-mentioned circumstances, the Claimant stressed that he terminated the employment contract with just cause.

9. Equally, the Chamber took note of the reply of the Respondent, which acknowledged the debt of the outstanding salaries and argued that the same were not paid due to the financial difficulties it had faced, which the Respondent allegedly could not overcome because of its relegation at the end of season 2014/2015.
10. In this respect, the Chamber recalled its longstanding and well-established jurisprudence according to which financial and sporting difficulties are not deemed as a valid reason to justify the non-payment of salaries.
11. On account of the aforementioned, and considering that the Respondent did not invoke any other reason to justify the non-payment of the Claimant's salaries and, even more, acknowledged the outstanding amount requested by the Claimant, the Chamber deemed that the Respondent failed to pay the due salary for May, June and July 2015 without any valid reason and therefore was in breach of its contractual obligations towards the Claimant for a significant period of time.
12. In view of the above, and taking into consideration the Chamber's longstanding jurisprudence in this respect, the Chamber decided that the Claimant had just cause to unilaterally terminate the employment contract on 29 July 2015 and that, as a result, the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant.
13. In continuation, having established that the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant, the Chamber focused its attention on the consequences of such termination. In this regard, in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the contract at the moment of the termination, *i.e.* EUR 67,500 corresponding to the salaries relating to May, June and July 2015.
14. In addition, taking into consideration the Claimant's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the members of the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amount of EUR 67,500 as follows:
 - a. 5% *p.a.* as of 11 May 2015 on the amount of EUR 25,000;
 - b. 5% *p.a.* as of 11 June 2015 on the amount of EUR 25,000;
 - c. 5% *p.a.* as of 11 July 2015 on the amount of EUR 17,500.
15. In continuation, having established that the Respondent is to be held liable for the termination of the contract with just cause by the Claimant and has to pay the amount of EUR 67,500 as outstanding remuneration to the Claimant, the Chamber decided that, in accordance with art. 17 par. 1 of the Regulations, the Respondent is liable to pay compensation for breach of contract to the Claimant.

16. In continuation, the Chamber considered that the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
17. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract and the private agreement contain a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract or in the private agreement at the basis of the matter at stake.
18. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the Claimant under the terms of the employment contract until 31 May 2016 and concluded that the Claimant would have received a total remuneration of EUR 515,000, had the contract been executed until its expiry date.
19. In continuation, the Chamber verified as to whether the Claimant had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
20. Indeed, the Claimant found employment with the club, K, with which he signed a contract valid from 1 August 2015 until 31 May 2016, with a salary of EUR 175,000 payable in ten monthly instalments of the amount of EUR 17,500 each as of 31 August 2015. Nonetheless, the Claimant explained that he eventually terminated this contract after four months. Then, on 5 January 2016, the Claimant signed a new employment contract with the club, F, valid from 10 January 2016 until 10 June 2016, according to which he was entitled to a total salary of USD 130,000, corresponding to approximately EUR 117,000. Consequently, the Chamber established that the value of the new employment contracts concluded between the Claimant and the new clubs amounted to EUR 187,000.
21. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the DRC decided that the Respondent must pay the Claimant the amount of EUR 328,000 which was to be considered a reasonable and justified amount of compensation for breach of contract in the matter at hand.

22. In addition and with regard to the Claimant's request for interest, the Chamber decided that the Claimant is entitled to 5% interest *p.a.* on said amount as of 26 August 2015 until the date of effective payment.
23. The members of the Chamber concluded their deliberations by rejecting any further claim of the Claimant.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, A, is partially accepted.
2. The Respondent, B, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of EUR 67,500 plus 5% interest *p.a.* until the date of effective payment, as follows:
 - a. 5% *p.a.* as of 11 May 2015 on the amount of EUR 25,000;
 - b. 5% *p.a.* as of 11 June 2015 on the amount of EUR 25,000;
 - c. 5% *p.a.* as of 11 July 2015 on the amount of EUR 17,500.
3. The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 328,000 plus 5% interest *p.a.* on said amount as of 26 August 2015 until the date of effective payment.
4. In the event that the amounts due to the Claimant in accordance with the above-mentioned numbers 2. and 3. are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.
5. Any further claim lodged by the Claimant is rejected.
6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.

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:

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