

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 9 February 2017,

in the following composition:

Thomas Grimm (Switzerland), Deputy Chairman

Eirik Monsen (Norway), member

Joaquim Evangelista (Portugal), member

Taku Nomiya (Japan), member

Todd Durbin (USA), member

on the claim presented by the player,

Player A, country B,

as Claimant

against the club,

Club C (now **Club D**), country E

as Respondent

regarding an employment-related dispute between the parties

I. Facts of the case

1. On 29 September 2015, the player from country B, Player A (hereinafter: *Claimant*), and the club from country E, Club C (currently known as Club D) (hereinafter: *Respondent*), concluded an employment contract (hereinafter: *contract*), valid from 1 August 2015 until 31 December 2015.
2. In accordance with the contract, the Claimant was entitled *inter alia* to receive the following remuneration:
 - EUR 600 as monthly salary, payable on the 15th day of the following month;
 - EUR 150 as a bonus for *"the win in match at home"*;
 - EUR 100 as a bonus for *"the win in away match"*;
 - EUR 50 as a bonus for *"the draw in away match"*.

The contract further specifies that the Claimant is entitled to the full amount of each bonus, if he plays 70 minutes or more, and 50%, in case he plays less than 70 minutes. Moreover, the contract establishes that *"The Player who does not enter the match has no claim for any bonus"*.

3. On 21 April 2016, the Claimant lodged a claim before FIFA against the Respondent for outstanding remuneration, requesting the amount of EUR 1,420, plus 5% interest *"as of the date of effective payment"*, composed as follows:
 - EUR 140 as *"additional payment"* regarding August 2015;
 - EUR 600 as monthly salary and EUR 80 as bonuses, regarding November 2015;
 - EUR 600 as monthly salary regarding December 2015.
4. The Claimant further requested that the Respondent be obliged to reimburse his legal expenses.
5. According to the Claimant, although he fulfilled his contractual obligations, the Respondent failed to pay him the above-mentioned amounts.
6. Although invited to do so, the Respondent failed to reply to the claim.
7. The Football Federation of country E informed FIFA in June and November 2016 that *"during the months of March and April there were changes in the Club C. The shares of the club were sold to another club and the seat of the club changed as well (from city F to city G). I forwarded your correspondence to the previous (Club C) and the new club (Club D). Unfortunately, until today, I have not received a reply of neither of the two clubs"* (free translation from *"Im Laufe der Monate März und April kam es zu den Veränderungen im Verein C. Die Aktien des Vereines wurden an einen anderen Verein verkauft und damit ist auch der Sitz des Vereines geändert. (Von Stadt F zu Stadt G). Ich habe Ihre Korespondenz an den ehemaligen (Klub C) und den neuen Verein (Klub D) weitergeleitet. Leider, bis heute habe ich keine Antwort seitens beider Vereinen erhalten."*)

8. In addition, the Football Federation of country E stated that “On 16 March 2016, Club C, based in city F, changed its company name to Club D, based in city G.
9. The Football Federation of country E further clarified, *inter alia*, that Club C applied for a business name change to “Club D” and that only formal and administrative changes were made. In addition, according to the Football Federation of country E, players were re-registered from “Club C” to “Club D” in its information system.

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 21 April 2016. Consequently, the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (edition 2015; hereinafter: *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 country B and a club from country E.
3. Furthermore, 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 21 April 2016, the 2015 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
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. 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.
5. In this respect, the DRC took note that the Claimant lodged a claim against the Respondent for outstanding remuneration on the basis of the employment contract concluded by the parties on 29 September 2015.

6. At this point, the members of the DRC deemed appropriate to first and foremost point out that the Football Federation of country E confirmed that, during the course of 2016, the Respondent changed its name from Club C to "Club D". Therefore, the Chamber highlighted that "Club C (now Club D)" is referred to as the Respondent in the present matter.
7. Subsequently, the DRC noted that the Respondent failed to present its response to the claim of the Claimant, in spite of having been invited to do so. By not presenting its position to the claim, the DRC deemed that the Respondent renounced its right of defence and concurred that, in accordance with art. 9 par. 3 of the Procedural Rules, it shall take a decision upon the basis of the documentation already on file; in other words, upon the statements and documents presented by the Claimant.
8. In this respect, the DRC took into consideration that according to the Claimant, the Respondent had failed to pay his remuneration in the total amount of EUR 1,420, corresponding to monthly salaries of November and December 2015 as well as a bonus and an "additional payment" regarding August 2015.
9. Taking into account the claim for monthly salaries, the Chamber reverted to the contract and verified that it established a monthly salary of EUR 600 each during the validity of the contract, payable on the 15th day of the following month.
10. In this regard, the DRC concluded that the Claimant had substantiated his claim pertaining to outstanding monthly salaries with sufficient documentary evidence. In addition, the DRC determined that the monthly salaries claimed by the Claimant should have been paid by the Respondent until the 15th day of the respective following month, i.e. 15 December 2015 and 15 January 2016.
11. In conclusion, the DRC established that the Respondent failed to remit the Claimant's monthly salaries for November and December 2015.
12. In continuation, the Chamber reverted to the claim of the Claimant relating to a bonus payment.
13. In this respect, the members of the DRC took note that the contract established different bonuses, payment of which was conditioned to the match results as well as to the participation of the Claimant in the relevant match. In particular, the DRC took note that the percentage of the bonuses due would vary considering the amount of minutes played by the Claimant in each match and that no bonus would be due in the event that the Claimant would not be fielded.
14. Having said that, the Chamber referred to art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, and concluded that the Claimant had not provided documentation demonstrating that he would be entitled to the claimed bonus of EUR 80. Moreover, the DRC considered that the Claimant had failed to indicate the contractual basis of the bonus of EUR 80 or the match it was related to.

15. In conclusion, the Chamber considered that the claim relating to the bonus of EUR 80 should be rejected.
16. In continuation, the DRC reverted to the claim for an “*additional payment*” and took note that the Claimant failed to specify the concept and the contractual basis of such claim, solely indicating that it was regarding the month of August 2015.
17. In this respect, the DRC took into account that the contract does not include any remuneration in the concept of “*additional payment*” and, thus, had to reject such claim.
18. On account of the aforementioned considerations, the Chamber decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant outstanding remuneration in the total amount of EUR 1,200 corresponding to the monthly salaries of November and December 2015.
19. In addition, taking into account the Claimant’s request, the DRC decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on each of the salaries for November and December 2015 as of the day following the day on which the payments fell due.
20. In addition, as regards the claimed legal expenses, the Chamber referred to art. 18 par. 4 of the Procedural Rules, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber, as well as to its long-standing and well-established jurisprudence and decided to reject the Claimant’s request relating to legal expenses.
21. The DRC concluded its deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player A, is partially accepted.
2. The Respondent, Club C (now Club D), has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of EUR 1,200 plus 5% interest *p.a.* until the date of effective payment as follows:
 - a. 5% *p.a.* as of 16 December 2015 on the amount of EUR 600;
 - b. 5% *p.a.* as of 16 January 2016 on the amount of EUR 600.
3. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA’s 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 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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For the Dispute Resolution Chamber:

Omar Ongaro
Football Regulatory Director

Encl. CAS directives