Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 9 May 2014,

in the following composition:

Geoff Thompson (England), Chairman
Johan van Gaalen (South Africa), member
Damir Vrbanovic (Croatia), member

on the claim presented by the player,

Player A, from country S

as *Claimant*

against the club,

Club T, from country G

as *Respondent*

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 8 August 2007, Player A, from country S (hereinafter: *the Claimant*), and Club T, from country G (hereinafter: *the Respondent*), concluded an employment contract (hereinafter: *the contract*), valid as from the date of signature until 30 June 2012.

2. On 10 June 2011, the parties entered into an agreement (hereinafter: *the agreement*), whereby the Respondent acknowledged owing the Claimant the amount of EUR 35,000 corresponding to salaries and bonuses due until 30 June 2011. In order to pay such amount, the Respondent gave a cheque to the Claimant, which was to expire on 31 August 2011. However, when the cheque was presented for collection, the relevant bank did not pay accordingly.

3. On 14 July 2011, the parties entered into a termination agreement (hereinafter: *the termination agreement*), whereby the Respondent undertook, *inter alia*, to pay the Claimant EUR 75,000 in two instalments, as follows:

   a) EUR 35,000 on 31 December 2011;
   b) EUR 40,000 on 30 June 2012.

4. Article 3 of the termination agreement further stipulates that "*the player […] declares not having any other financial claim against the club and that he will not have any future claim*".

5. On 20 February 2013, the Claimant lodged a claim against the Respondent before FIFA requesting a total amount of EUR 110,000 under both the agreement, in the amount of EUR 35,000, and also under the termination agreement, in the remaining amount of EUR 75,000.

6. In its reply, the Respondent admits the existence of outstanding amounts in favour of the claimant but in order to proceed with the relevant payments, the Respondent requires first from the Claimant to return the cheque to the Respondent, considering its nature of negotiable instrument.

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 20 February 2013. Consequently, the 2012 edition of the Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) is applicable to the matter at hand (cf. art. 21 par. 1 and par. 2 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 and par. 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2012) 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 country S player and a country G club.

3. Furthermore, the Chamber analysed which edition of the 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 2012; hereinafter: *the Regulations*), and considering that the present claim was lodged on 20 February 2013, the 2012 edition of said 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 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 members of the DRC acknowledged that it was undisputed by the parties that, on 8 August 2007, they signed an employment contract, valid as from the date of signature until 30 June 2012.

6. The DRC further noted that the parties also do not dispute the fact that, on 10 June 2011, they signed an agreement, as per which the Respondent undertook to pay to the Claimant the amount of EUR 35,000, corresponding to salaries and bonuses due until 30 June 2011.

7. Finally, the Chamber acknowledged that it was equally undisputed by the parties that, on 14 July 2011, they concluded a termination agreement stipulating that the total amount of EUR 75,000 should be paid by the Respondent to the Claimant, as detailed in point I.3. above.

8. Subsequently, the Chamber recalled that the Claimant maintains that the Respondent owes him EUR 110,000 in total, of which EUR 35,000 would be owed

as per the agreement and the remaining EUR 75,000 would be owed under the termination agreement.

9. Furthermore, the DRC noted that the Respondent acknowledges the existence of outstanding amounts in favour of the Claimant without, however, stating a specific amount.

10. Having established the aforementioned, the DRC deemed that the central issue in the matter at stake would be, thus, to determine the amount of outstanding remuneration owed by the Respondent to the Claimant. In order to do so, the DRC would first need to identify which one(s) of the agreements provided by the Claimant is (are) at the basis of the financial right he is claiming in front of the DRC.

11. In this regard, the members of the Chamber noted that, according to the Claimant, the legal basis of the claim at stake is both the agreement and the termination agreement. In this respect, the Chamber noted that one month after the parties concluded the agreement (cf. point I.2. above), they signed the termination agreement (cf. point I.3. above) and included in it the following clause: "*Additionally, the player A states that he does not have any other financial claim against the club and that he will not have any future claim*" (cf. point I.4. above), without making any reservation of rights in respect of the amount indicated in the agreement.

12. In view of the foregoing, the members of the Chamber agreed that the aforementioned clause inserted in the termination agreement (cf. points I.4. and II.11. above) signed by both the Claimant and the Respondent unambiguously stipulates that the Respondent had to pay only EUR 75,000 and that the Claimant did not have any further claim against the Respondent. In addition, 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, the Chamber deemed that the Claimant had not presented any documentation, which would demonstrate that the debt specified in the agreement would be excluded from the release and waiver of actions contained in the relevant clause of the termination agreement.

13. Furthermore, the Chamber highlighted that the Claimant signed the termination agreement on 14 July 2011 while being fully aware of the contents of the agreement entered into on 10 June 2011 (i.e. one month before the termination agreement). In this context, the Chamber deemed it appropriate to emphasize that a party signing a document of legal importance, as a general rule, does so on its own responsibility and is consequently liable to bear the possible consequences arising from the execution of such document.

14. Based on the aforementioned, in particular on art. 3 of the termination agreement, the Chamber deemed that it could not uphold the Claimant's arguments as to being EUR 110,000 the amount of outstanding remuneration in his favour, based on the alleged simultaneous validity of both the agreement and the termination agreement.

15. On account of the aforementioned considerations, the DRC established that the termination agreement is the only legally binding document at the basis of the Claimant's claim and that the Respondent had failed to pay to the Claimant the amount as agreed upon in the termination agreement, totalling EUR 75,000. Consequently, the DRC concluded that, in accordance with the general legal principle of *"pacta sunt servanda",* the Respondent is liable to pay to the Claimant the amount of EUR 75,000.

16. Furthermore, and with due consideration to the above, the DRC decided that the Claimant has to return to the Respondent the cheque amounting to EUR 35,000, bearing the date of 31 August 2011.

17. 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 T, has to pay to the Claimant the amount of EUR 75,000 **within 30 days** as from the date of notification of this decision.

3. In the event that the amount due to the Claimant in accordance with the above-mentioned number 2. is not paid by the Respondent within the stated time limit, interest at the rate of 5% *p.a.* will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

4. The Claimant is ordered to return to the Respondent the cheque in the amount of EUR 35,000 dated 31 August 2011, **within 30 days** as from the date of notification of this 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 67 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
Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the Dispute Resolution Chamber:

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Markus Kattner
Deputy Secretary General

Encl. CAS Directives