

# Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 11 June 2015,

in the following composition:

**Thomas Grimm** (Switzerland), Deputy Chairman  
**Carlos González Puche** (Colombia), member  
**Santiago Nebot** (Spain), member  
**Mohammed Al-Saikhan** (Saudi-Arabia), member  
**Zola Percival Majavu** (South Africa), member

on the claim presented by the player,

**A**, country C  
represented by Mr xxxxxx

*as Claimant*

against the club,

**B**, country H

*as Respondent*

regarding an employment-related dispute between the parties

## I. Facts of the case

1. On 31 December 2013, the player from C , A (hereinafter: *player* or *Claimant*) and the club from H, B (hereinafter: *club* or *Respondent*) concluded an employment contract valid as from 1 January 2014 until 31 May 2014 (hereinafter: *contract*).
2. According to the contract, the player was entitled to receive, inter alia, a monthly salary of xxxxxx (hereinafter: xxx) 34,875.
3. According to the player, on 28 March 2014 the club terminated the contract with immediate effect (due to the suspension of the club by the Football Federation of H) and confirmed that salary payments up to the amount of xxx 93,000 were outstanding.
4. On 10 September 2014, the player put the club in default of the payment of xxx 93,000.
5. On 21 October 2014, the player lodged a claim before FIFA against the club, claiming payment of outstanding remuneration in the total amount of xxx 93,000, specified as follows: xxx 23,250 for the period between 10 March 2014 and 31 March 2014, xxx 34,875 for the month April 2014 and xxx 34,875 for the month May 2014.
6. Further, the player requested interest on the total amount of xxx 93,000 as of the respective due dates, as well as payment of legal expenses and procedural costs by the club.
7. The club, for its part, holds that on 28 March 2014, after a request of the player, it informed the player in writing that the contract was cancelled and that the "*final salary payment arranges an equivalent amount of basic wages in lieu of notice made up 10 March, 2014 instead of 31 May 2014*". Further, the club stated in its letter: "*Therefore, contract period and salary-payment fall short of 2 months and 20 days or equivalent to xxx 93,000-*".
8. Finally, the club stated the employment contract was terminated on 7 April 2014 "*under mutual agreement*" and that the club and the player agreed on a final settlement of xxx 16,000. In this respect, the club submitted a copy of a termination agreement dated 7 April 2014, stating that the contract "*had been cancelled under mutual agreement*". Therefore, it rejects the claim of the player.
9. In his replica, the player stated that he did not request for the letter dated 28 March 2014 and that the club failed to prove that this letter was written upon his request. The player further confirms that he signed the document according to which the contract was terminated by mutual consent, but that he did not waive his right to claim the amount of xxx 93,000. According to the player, the club did not present evidence to prove that the player and the club agreed on a final settlement of xxx

16,000. Finally, the player states that the club never paid him said amount of xxx 16,000.

10. In its duplica, the club stated that the player requested the letter dated 28 March 2014 after receiving instructions to do so from his lawyer. Finally, the club insists that the player accepted the mutual termination of his contract, as well as the payment of xxx 16,000 as a final settlement.

## **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 October 2014. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2014; 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 2015) 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 C and a club from H.
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 2015), and considering that the present claim was lodged on 21 October 2014, the 2014 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. First of all, the members of the Chamber acknowledged that the Claimant and the Respondent had concluded an employment contract valid as from 1 January 2014 until 31 May 2014. As to the financial terms of said contract, the Chamber took note

that it had been agreed upon between the parties that the Respondent would pay to the Claimant a monthly salary of xxx 34,875.

6. The Chamber further observed that the Claimant lodged a claim in front of FIFA against the Respondent seeking payment of the amount of xxx 93,000, indicating that the Respondent had confirmed that said amount - related to the period 10 March 2014 until 31 May 2014 - was outstanding. According to the Claimant, the Respondent failed to pay said amount after the Claimant and the Respondent signed a termination agreement on 7 April 2014.
7. In reply to the claim lodged against it, the Respondent alleged that the contract was terminated on 7 April 2014 "under mutual agreement" and that the Claimant agreed on a final settlement of xxx 16,000. Therefore, the Respondent concludes that it paid the Claimant all the amounts he was entitled to.
8. In his replica, the Claimant stated that the contract was indeed terminated on 7 April 2014 by mutual consent, but that he never received the amount of xxx 16,000 and that he did not waive his right to claim the amount of xxx 93,000.
9. In its duplica, the Respondent reiterates that the player accepted the payment of xxx 16,000 as a final settlement for the termination of the contract.
10. In this context, the members of the Chamber acknowledged that the central issue in the matter at stake was to determine whether the Claimant and the Respondent agreed on an amount to be paid by the Respondent to the Claimant in relation to the termination of the contract, and, if so, whether the Respondent paid said amount to the Claimant.
11. In this respect, the Chamber acknowledged that, in accordance with the employment contract provided by the Claimant, the Respondent was obliged to pay to the Claimant a monthly salary of xxx 34,875 during the whole term of the contract.
12. In continuation, the members of the Chamber took into consideration that according to the Claimant, the Respondent had failed to pay his remuneration as from 10 March 2014 and that he was entitled to the total amount of xxx 93,000. Bearing in mind art. 12 par. 3 of the Procedural Rules, relating to the general principle of burden of proof, the members of the Chamber acknowledged on the one hand that the Claimant stated that he did not receive salaries as from 10 March 2014, and on the other hand that the Respondent did not provide any evidence that it was only liable to pay the salary of the player until 10 March 2014. Taken into consideration that the contract was uncontestedly terminated on 7 April 2014, the members of the Chamber concluded that the Respondent is liable to pay salary in the amount of xxx 31,388, related to the period between 10 March 2014 and 7 April 2014, to the Claimant.
13. Furthermore, the Chamber emphasized that the termination agreement, which is signed by both the Claimant and the Respondent, does not mention any amounts

that were to be paid by the Respondent to the Claimant after the termination of the contract. Further, the letter dated 28 March 2014 does not explicitly and unambiguously mention that the Respondent is obliged to pay the amount of xxx 93,000 to the Claimant.

14. In this respect, and referring again to art. 12 par. 3 of the Procedural Rules, the members of the Chamber observed that the Claimant did not provide evidence that he was entitled to the payment of the amount of xxx 93,000 or any other amount in relation to the termination of the employment contract. Therefore, the members of the Chamber concluded to reject the Claimant's arguments in this respect.
15. What is more, on the Chambers opinion, the payment receipt of 5 May 2015 signed by the club only, does not suffice to establish that an amount of xxx 16,000 was effectively paid to the player. As such, the Chamber determined that this alleged payment could not be taken into consideration.
16. On account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant the amount of xxx 31,388 for the period between 10 March 2014 and 7 April 2014.
17. 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 the amount of xxx 23,250 as of 1 April 2014 and 5% *p.a.* on the amount of xxx 8,138 as of 8 April 2014, until the date of effective payment.
18. Subsequently, the Dispute Resolution Chamber decided to reject the Claimant's claim pertaining to legal costs in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber's respective longstanding jurisprudence in this regard.
19. The Chamber concluded its deliberations in the present matter by rejecting any further request filed by 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, the amount of HKD 31,388 plus 5% interest *p.a.* until the date of effective payment as follows:
  - a. 5% *p.a.* as of 1 April 2014 on the amount of xxx 23,250;
  - b. 5% *p.a.* as of 8 April 2014 on the amount of xxx 8,138.

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.

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**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  
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[www.tas-cas.org](http://www.tas-cas.org)

For the Dispute Resolution Chamber:

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Jérôme Valcke  
Secretary General

Encl. CAS Directives