Decision of the

Dispute Resolution Chamber

passed in Zurich, Switzerland, on 30 June 2017,

in the following composition:

Geoff Thompson (England), Chairman
Roy Vermeer (Netherlands), member
Zola Majavu (South Africa), member

on the claim presented by the player,

Player A, Country B

as *Claimant / Counter-Respondent*

against the club,

Club C, Country D

as *Respondent / Counter-Claimant*

and the club,

Club E, Country B

as *Intervening Party*

regarding an employment-related dispute
between the parties

I. Facts of the case

1. On 15 December 2011, the Player of Country B, Player A (hereinafter: *the player* or *Claimant/Counter-Respondent*) and the Club of Country D, Club C (hereinafter: *the club* or *Respondent/Counter-Claimant*) signed an employment contract, valid as from 1 January 2012 until 31 December 2015 (hereinafter: *the contract*). According to said contract, the player was entitled to receive a monthly salary of USD 7,000, payable on the 15th day of the next month.

2. In addition, on 23 January 2014, the parties concluded an annex to said contract (hereinafter: *annex 1*), in article 2 par. 1 of which *inter alia* the following is stipulated: '*[…] due to the fact that the player did not take part in training of the club in January 2014, he shall not be entitled to the remuneration for January 2014 and the Player shall not claim it from the club in the future*'.

3. On 10 February 2015, the player and the club signed an additional annex to the contract (hereinafter: *annex 2*), dated 10 February 2015, according to which in the period between 1 July 2014 and 30 June 2015, the monthly salary of the player was reduced to USD 4,000. Furthermore, annex 2 contains the following clause: '*[…] in January and February 2015 the Player had not trained with the Club C or did not provide other services to the club […]. Therefore, the parties agree that the Player is not entitled to the remuneration for the month of January and February 2015 […]*'. Moreover, annex 2 stipulates that the contract was extended until 30 June 2016.

4. Article 19. par. 2 of the contract stipulates the following: '*Any dispute arising in connection with the execution of this Agreement shall be considered by the Court of Arbitration Football the Football Association of Country D*'.

5. Furthermore, according to a loan agreement dated 1 March 2012, in the period between 10 March 2012 and 30 June 2012, the player was loaned to the Club of Country B, Club F. By means of an annex dated 26 June 2012, said loan period was extended until 31 December 2012, and by means of an additional annex dated 31 December 2012, the loan period was again extended until 30 June 2013.

6. In addition, according to a loan agreement dated 24 July 2013, in the periods between 25 July 2013 until 3 December 2013, the player was loaned to the Club of Country B, Club G. In this respect, the club and the player agreed in a separate agreement dated 25 July 2013, that '*Club C agrees on free loan of the Player to Club G for the period from 25.07.2013 until 31.12.2013 year*'. Further, in said agreement the following is stipulated: '*Parties declare that during the player loan from 01.07.2013 until 31.12.2013 year contract for professional practice of football concluded between the parties on 15.12.2011 shall be suspended*'.

7. By means of a loan agreement dated "1 July 2014", in the period between 1 January 2014 and 31 December 2014, the player was again loaned to Club G.

8. Moreover, in the period between 26 February 2015 and 30 November 2015, the player was loaned to the Club of Country B, Club H.

9. On 1 March 2016, the player unilaterally terminated his contract with the club, because of several outstanding salaries and the fact that the club allegedly failed to meet other contractual obligations. Furthermore, the player argues that the club 'did not accept' the player's '*right to work*'.

10. By means of a claim, posted on 2 March 2017 and received by FIFA on 17 March 2016, the player requested from the club the payment of outstanding remuneration and compensation for breach of contract in the total amount of USD 87,000, broken down as follows:

    Outstanding remuneration in the amount of USD 51,000, as follows:
    - the monthly salaries for the months of December 2012, January 2013, December 2013, January 2014 and February 2014, in the amount of USD 7,000 each;
    - the monthly salaries for the months of December 2014, December 2015, January 2016 and February 2016, in the amount of USD 4,000 each;

    Compensation for breach of contract in the amount of USD 36,000, as follows:
    - USD 16,000 as remaining value of the contract in the period between March and June 2016;
    - USD 20,000 as 'additional compensation for the damages caused by the breaches of the contract' by the club, corresponding to "*six months of salary*".

    Furthermore, the player requested 5% interest *p.a.* on all requested amounts as from the respective due dates, as well as to impose sporting sanctions on the club.

11. In his claim, the player explains that as from December 2012, the club failed to pay him several salaries, all such outstanding salaries related to the periods during which the player was not on loan with other clubs.

12. Furthermore, the player states that after having asked for the payment of the outstanding salaries and requesting for playing time in the first team of the club, the club threatened him. According to the player, the club's officials held that he would '*not play whole 2015 year*' and forced the player to sign the annex dated 10 February 2015 (cf. point I./3. above).

13. In addition, the player held that after he returned to the club on 2 December 2015, after being on loan with Club H, he was informed that there was '*no work*' for him. As a result, the player holds to have returned to Country B. On 5 January 2016, according to the player, he asked the club for a visa to return to Country D, in order to continue to perform his duties under the contract.

14. After having received the work visa on 6 February 2016, the player claims to have returned to Club C on 8 February 2016. Upon arriving, the player holds that the club informed him that it was not interested in his services anymore, and that it wanted to transfer him to the Club of Country B, Club E (hereinafter: *Club E* or *Intervening party*). Furthermore, the player argues that the club asked him to sign a waiver regarding the outstanding salaries for December 2015 and January 2016, which the player refused to do.

15. Moreover, the player states that he put the club in default on 18 February 2016 for the outstanding amounts until that date, providing the club a deadline for payment until 25 February 2016. Further, on 23 February 2016 the player informed the club that due to the breach of contract by the club he left Country D, since he had no financial means to stay in Country D any longer.

16. Finally, the player argues that on 24 February 2016, he was informed by the club that he was in breach of his contract, due to his absence in the period between 1 December 2015 and 24 February 2016. According to the player, the club asked him to return to Club C for '*trainings with our team*'.

17. Moreover, the player holds that on 25 February 2016, he sent a letter to the club, denying that he was in breach of the contract. Further, the player explained that the club was in breach of the contract, by failing to pay him several monthly salaries and by failing to timely provide him with a visa. Also, the player states that he was not authorized by the club to resume his training in December 2015 and that as a result, he returned to Country B. After the club did not pay him the outstanding salaries, on 1 March 2016, the player unilaterally terminated the contract (cf. point I./9. above).

18. In its reply to the player's claim dated 4 May 2016, the club contested FIFA's competence in the matter at hand and argues that in article 19 par. 2 of the contract, the parties concluded that the Court of Arbitration in Football of the Football Association of Country D (hereinafter: *The NDRC of the Football Association of Country D*) is competent in said matter. Moreover, the club argues that The NDRC of the Football Association of Country D meets the criteria of fair proceedings and equal representation of players, and therefore is an independent tribunal.

19. As to the substance, the club states that the player had no just cause to terminate the contract. In this respect, it confirms that it concluded the contract and annex 2 with the player, however arguing that also an additional annex dated 23 January 2014 was concluded between the parties (the annex 1, cf. point I./2. above), which was, according to the club, '*purposely kept secret in the Player's claim*'.

20. Further, the club argued that the player's performance was not good enough to stay in the first team and that he was loaned to:

- Club F in the period between 1 March 2012 and 30 June 2013;
- Club G in the period between 25 July 2013 and 31 December 2014;
- Club H in the period between 26 February 2015 and 30 November 2015.

21. Subsequently, the club held that the player returned in December 2015 to Club C, with the only intention to discuss the early termination of the contract. The club however informed the player that it did not agree with an early termination. Further, the club holds that afterwards, the player refused to participate in the club's training sessions.

22. In addition, the club held that the player's working permit expired on 31 December 2015 and that the player did not submit a copy of his passport. As a result, the club could not provide the player with a valid work permit, however only with a '*touristic visa*'.

23. Furthermore, the club holds that in January 2016, it negotiated with Club E the transfer of the player. After the negotiations with Club E had stopped, the player started to address contractual issues to the club, raising from '*events more than 3 years ago', trying to 'antagonize the relationship with Club C*'. Moreover, after the unilateral termination of the contract by the player on 1 March 2016 and his subsequent signing of a contract with Club E, the club holds to have objected the registration of the player with Club E.

24. In addition, the club argues that the requested salaries for the months of December 2012, January 2013, December 2013, January 2014 and February 2014 are time-barred, as these are related to events that happened more than two years before the player lodged his claim. Further, the club holds that it was never obliged to pay these salaries, because the player was on loan with Club F and Club G, as a result of which the contract was suspended.

25. Moreover, also '*in the periods of no sports performance of the new clubs in Country B*', the club argues that the contract it concluded with the player was suspended and that it was not obliged to pay salaries. In addition, the club referred to annex 1, holding that the player is not entitled to the salary or January 2014, and to the additional agreement in relation to the loan with Club G (cf.

point 6. above), which stipulates that the contract was suspended until 31 December 2013.

26. Moreover, the club argues that the player is also not entitled to the salary for December 2014, as the contract between the parties was suspended, because of the loan of the player to Club G. With regard to the salaries for December 2015, January 2016 and February 2016, the club states that the player chose to not participate in training sessions during said period, due to '*alleged family reasons*', which was a decision made by himself. As a result, according to the club, the player is not entitled to these requested salaries.

27. In conclusion, the club states that the issuance of a visa was a valid prerequisite for the continuation of the employment relationship between the club and the player. However, according to the club, the player did not deliver the requested documents for the application for a work visa, and was more focused on terminating the contract, as well as negotiating on a possible contract with other clubs, *e.g.* Club E.

28. Finally, the club concludes that the player terminated the contract without just cause and that he is not entitled to the claimed compensation for breach of contract. Furthermore, the club lodged a counterclaim against the player, claiming the amounts of USD 46,000 and EUR 15,000 to be paid by the player, broken down as follows:

    - USD 16,000 as residual value of the contract in the period between 1 March 2016 and 30 June 2016;
    - EUR 15,000 as '*the current (taking into account the time remaining on the existing contract with Club C) value of the Player*';
    - USD 30,000 as '*30% of the future transfer fee (assuming the future transfer fee to be equal to the fee from 2011)*'.

    Furthermore, the club asked for 5% interest *p.a.* on the abovementioned amounts as from the '*issuance of the decision*', as well as sporting sanctions to be imposed on the player.

29. With respect to the club's allegations that FIFA's DRC is not competent in the matter at hand, the player denies the competence of The NDRC of the Football Association of Country D, as this NDRC is not recognised by FIFA. In this respect, the player argues that article 19 par. 2 of the contract (cf. I./4. above) is a '*pre-printed standard clause*', which '*does not reflect special provisions with respect to disputes with international dimension and cannot be considered as the standard arbitration clause*'.

30. Further, the player states that the Court of Arbitration in Football of the Football Association of Country D is not the same body as the DRC of the Football Association of Country D, which also follows from article 45 section 1 of the Status of the Football Association of Country D. As a result, The NDRC of the Football Association of Country D can never be competent to deal with the matter at hand, since the parties had never '*chosen and explicitly opted in writing*' for the competence of The NDRC of the Football Association of Country D.

31. Moreover, the player holds that the Court of Arbitration in Football of the Football Association of Country D '*could be considered as independent arbitration tribunal*'. However, based on article 47 of the Statutes of the Football Association of Country D and in order to choose for the competence of the Court of Arbitration in Football of the Football Association of Country D, the parties needed to include a clause with an exact wording into their contracts. The player holds that this was not done in the matter at hand.

32. Subsequently, the player stresses that article 57 of the Statutes of the Football Association of Country D, The NDRC of the Football Association of Country D can deal with only national disputes (*i.e.* between Parties of Country D) and that international disputes have to be dealt with by FIFA.

33. Finally, the player states that from previous cases colleagues of him had at the Court of Arbitration in Football of the Football Association of Country D, there are serious doubts as to whether said body meets the requirements for fair proceedings, as a significant amount of advance of costs is to be paid. Moreover, according to the player, the club's chairman, Mr J, is also a member of the Football Association of Country D Management Board and threatened him that in case he would lodge a claim against the club, Mr J '*could organize a problems due to a good relations with the Football Association of Country D*'.

34. As to the substance, the player first of all denies that his claim is partially time-barred, as the time limits '*should be started from the time when I became acquainted about absence of payments, i.e. from February 2016*'. Furthermore, the salary for February 2014 was only due on 15 March 2014, so this salary cannot be time-barred, even if the date of the claim would be the relevant criterion.

35. Further, the player denies that he signed annex 1 of the contract (cf. point I./2. above), also referring to the fact that he participated in the club's training camp in January 2014 and played three friendly matches. Moreover, the player argues that the clause in art. 2 par. 1 of annex 1 is invalid.

36. Furthermore, the player argues that he signed the annex 2 to the contract (cf. point I./3. above) under pressure of the club's management and that he was also '*forced*' to sign the separate agreement dated 25 July 2013 (cf. point I./6. above).

In addition, the player denies to have signed the annex dated 31 December 2012 (cf. point I./5 above), the loan agreement dated 24 July 2013 (cf. point I./6. above) and the loan agreement dated 1 July 2014 (cf. point I./7. above).

37. Furthermore, the player states that he is entitled to the salaries for December 2012, January 2013, December 2013, January 2014 and December 2014 as the contract with the club was not suspended during said period and he was no longer on loan with other clubs.

38. Regarding the club's allegations that the player refused to resume his work in December 2015, the player holds that he was prevented from accessing the club's training sessions, as well as that he was instructed by Ms K, the club's Managing Director, that he had to leave Country D, as there was no work for him.

39. In addition, the player holds that it was the club's responsibility to '*assist me or even grant independently a work permit and multi-entrance visa to the country for work*'.

40. With respect to the club's counterclaim, the player denies to have '*antagonized the relationship*' with the club and states that during the negotiations with other clubs, he was '*acting openly*' towards the club. Furthermore, the player argues that the documents provided by the club, show that the club and Club E '*almost agree my loan on free of charge basis*', and that an alleged sell-on clause of 30% (cf. point 28. above) could not be acceptable, since the document said clause is based on, is not signed by both Club E and the club.

41. In conclusion, the player holds that he never violated the contract, and that therefore, the counterclaim of the club has to be rejected.

42. In its duplica, the club holds that by means of article 19 par. 2 of the contract, the parties clearly intended to opt-out from the competence of FIFA. Furthermore, the club argues that as per art. 1 section 2 of the Resolution IXI/81 of November 19th, 2015 of the Management Board of the Football Association of Country D (cf. point I./18. above), The NDRC of the Football Association of Country D can be competent in all kind of matters, '*irrespective the nationality of the parties*'. This Resolution should prevail over article 57 of the Statutes of the Football Association of Country D. Moreover, the club holds that The NDRC of the Football Association of Country D meets the requirements for fair and independent proceedings.

43. Further, the club reiterates that the request of the player for the salaries of December 2012, January 2013, December 2013, January 2014 and February 2014 is time-barred. Moreover, the club argues that it is undisputed that the player signed the loan agreements with Club F and Club G, and that he never objected

to perform his services to the clubs in Country B. Also, the club holds that the player did not prove that he took part in the training camp in January 2014, and further argues that the salary for February 2014 had to be borne by Club G, as the player was only in the first week of February 2014 at the disposal of the club.

44. In addition, the club argues that for the salary in relation to December 2014, the player and Club G decided to terminate the loan by mutual agreement, a decision for which the club cannot be held liable.

45. In relation to the salaries for December 2015, the club holds that the player did not prove that '*he had been deprived from participating in training sessions*'. For the salaries related to January and February 2016, the club again referred to the fact that the player did not submit a copy of his passport and that as a result, no work permit could be requested for him.

46. In conclusion, the club asks for the rejection of the player's claims and for the acceptance of its counterclaim. In this respect, it concludes that the player '*openly admits that he declined to sign a written declaration of no entrance into an agreement with a third party regarding his economic rights*', as well as that the '*the sell-on clause (initially of 25% and then of 30%) was included in the transfer offers of Club E itself dated 19th January 2016*'.

47. The player submitted unsolicited comments, arguing that the club is responsible for the payment of salaries in the '*time between each respective loan*', that is:

- for the period between 27 November 2012 and 14 January 2013, because he was not on loan with Club F in this period;
- for the period between 3 December 2013 and 25 February 2014, as well as for the month of December 2014, because he performed his services for the club and was not on loan with Club G;
- for the period between 3 December 2015 and February 2016, because was he was not on loan with Club H in this period.

48. Furthermore, the player argues that he was never aware of the end of the loan period, as this was only agreed upon between the club and the respective Club of Country B where he was on loan. Therefore, the player holds that he could not renounce his right to receive remuneration from the loaning clubs.

49. With respect to discussion around the work visa, the player holds that apparently he needed to send a scan of '*all completed pages of valid passport*', but that he confirmed to the club that his '*valid passport was not changed*'. The player concludes that the club had all documents needed to '*initiate for me procedure for applying for a residence and work permit*'.

50. Finally, the player holds that all negotiations regarding his transfer to another club were '*managed exclusively by Club C*'.

51. The club further informed FIFA that the player received remuneration from Club G in December 2014, by means of '*court proceedings*' and submitted a copy of a decision from the District Court of City L in City M dated 29 January 2015 in this respect. According to said decision, the player was entitled to inter alia receive the amount of XXX 65,494,400 (approximately USD 4,300) related to salaries and bonuses in the period between 3 December 2014 and 14 January 2015.

52. After being requested to do so, the player provided FIFA with an update about his contractual situation. The player first states that after 3 December 2014, he was no longer '*an employee of Club G*' and can therefore not be entitled to receive salary from said club in December 2014. However, because of a delay in the payment, the player started a procedure under the Law of Country B, claiming '*average remunerations for delay of final payment on the day of dismissal for the period from 3 December to 30 December 2014*'.

53. Furthermore, the player explained that on 17 March 2016, he signed a contract with Club E, valid as from 17 March 2016 until 16 December 2016. According to said contract, the player was entitled to receive (a) a basic wage rate of XXX 292,000 (approximately USD 14), (b) a monthly fixed salary of XXX 15,746,135 (approximately USD 760) and (c) a monthly 'premium part' of XXX 32,451,540 (approximately USD 1,565).

54. After being requested to do so, the new club of the player, Club E, submitted its position to the matter, stating that after '*not so smoothly*' negotiations with the club, only on 17 March 2016, it signed a contract with the player, valid as from 17 March 2016 until 16 December 2016. The club further explains that the player is currently unemployed.

55. Furthermore, Club E holds that it investigated the circumstances around the termination of the contract between the player and the club, as well as that it received a copy of the player's termination letter dated 1 March 2016 and the claim of the player against the club dated 5 March 2016.

56. In addition, Club E argues that it received a confirmation of the Football Federation of Country B, with the following quote: '*In accordance with data of FIFA TMS system the player's ITC is located at Football Federation of Country B since 13 March 2013. There are no pending and active requests about returning/issuing the player's ITC*'.

57. In conclusion, the club held that it did not '*illegally approached the player during his valid contract with Club C and did not induce to his decision to terminate the contract by just cause*'.

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 from the information on file it could be established that the present matter was submitted to FIFA on 2 March 2016 (cf. point I./10. Above), as this was the date on which the player posted his claim. 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 would, in principle, be competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Player of Country B and a Club of Country D, with the involvement of a Club of Country B.

3. However, the Chamber acknowledged that the club contested the competence of FIFA's deciding bodies on the basis of the alleged fact that the Court of Arbitration in Football of the Football Arbitration of Country D is competent in the present matter.

4. In this regard, the Chamber noted that the player rejected such position and insisted that FIFA has jurisdiction to deal with the present matter.

5. Taking into account all the above, the Chamber emphasised that in accordance with art. 22 lit. b) of the Regulations on the Status and Transfer of Players it is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the Chamber referred to the FIFA Circular no. 1010 dated 20 December 2005. Equally, the members of the Chamber referred to the principles contained in the FIFA National Dispute

Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.

6. In relation to the above, the Chamber also deemed it vital to outline that one of the basic conditions that needs to be met in order to establish that another organ than the DRC is competence to settle an employment-related dispute between a club and a player of an international dimension, is that the jurisdiction of the relevant national arbitration tribunal or national court derives from a clear reference in the employment contract.

7. Furthermore, with reference to art. 9 par. 1 and art. 12 par. 3 of the Procedural Rules the party contesting the competence of FIFA's deciding bodies, needs to provide sufficient documentary evidence, on the basis of which it could be established that another deciding body than FIFA's deciding bodies is competent, and that such other deciding body complies with the standards of an independent arbitration tribunal guaranteeing equal representation and fair proceedings.

8. In view of the foregoing, while analysing whether it was competent to hear the present matter, the Dispute Resolution Chamber considered that it should, first and foremost, analyse whether the employment contract at the basis of the present dispute contained a clear arbitration clause.

9. In this respect, the Chamber recalled that art. 19 par. 2 of the employment contract stipulates that: '*Any dispute arising in connection with the execution of this Agreement shall be considered by the Court of Arbitration Football of the Football Association of Country D*'.

10. Having examined the relevant provision, the Chamber came to the conclusion that art. 19 par. 2 in itself is a clear arbitration clause, referring to a specific dispute resolution body in Country D.

11. Subsequently, the members of the Chamber established that the documents provided by the club in its reply in order to prove that the Court of Arbitration in Football should be competent to deal with the matter at hand, are however related to the Dispute Resolution Chamber of the Football Association of Country D, which is another deciding body than the Court of Arbitration in Football of the Football Association of Country D and to which body no reference is made in the pertinent contract. As such, the Chamber could not establish – as the club did not submit supporting documentary evidence – that the Court of Arbitration in Football of the Football Arbitration of Country D complies with the standards of an independent arbitration tribunal guaranteeing equal representation and fair proceedings.

12. The foregoing conclusion is also supported by the club's statements in its reply, in which it refers to the competence of both the Court of Arbitration in Football and the Dispute Resolution Chamber, both deciding bodies under the Football Association of Country D, therefore, not referring to one specific national deciding body. Furthermore, the DRC also noted that on 4 May 2017 (cf. point I./23. above), the club lodged a counterclaim against the player in front of FIFA, confirming that it in fact accepts the competence of the DRC to deal with the present matter.

13. On account of all the above, the Chamber established that the club's objection towards the competence of FIFA to deal with the present matter has to be rejected, and that the Dispute Resolution Chamber is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.

14. 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 2 March 2016, the 2015 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

15. Subsequently, the DRC duly noted that – in view of the date of the player's claim and the club's allegations that said claim has to be considered time-barred - it should examine if the present claim, or any part of it, could be possibly time-barred. In this respect, the Chamber noted that the employment contract at the basis of the dispute was concluded on 15 December 2011, as well as that based on the documentation on file, it could be established that the player lodged his claim before FIFA on 2 March 2016, claiming for alleged outstanding salaries as from the month of December 2012.

16. In this respect, the members of the Chamber referred to art. 25 par. 5 of the Regulations, which, in completion to the general procedural terms outlined in the Procedural Rules, clearly establishes that the decision-making bodies of FIFA shall not hear any dispute if more than two years have elapsed since the event giving rise to the dispute arose and that the application of this time limit shall be examined *ex officio* in each individual case.

17. Bearing in mind the foregoing, the DRC referred to the claim of the player, based on which he requested *inter alia* the payment of the salaries for the months of December 2012, January and December 2013, January 2014, February and December 2014, December 2015, as well as January and February 2016. All these salaries were due on the 15th day of the following month, as per the contract signed between the parties on 15 December 2011.

18. As a consequence, recalling that the present claim was lodged on 2 March 2016, the DRC concluded that the time limit of two years had elapsed for claiming the salaries for the months of December 2012, January and December 2013, as well as January 2014. Therefore, this part of the player's claim is to be considered time-barred and consequently inadmissible. The Chamber concluded its reasoning by stating that the player's other requests, as well the subsequent counterclaim of the club, were made within the 2 years' time limit and, therefore will be further analysed as to their substance.

19. 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.

20. The members of the Chamber first acknowledged that the parties were contractually bound by means of an employment contract and two annexes, valid altogether as from 1 January 2012 until 30 June 2016.

21. Furthermore, the DRC noted that the player, on the one hand, maintained that during the validity of his contract with the club, he was loaned to several other clubs, only playing for the club in a limited period of time. Moreover, the player indicates that during the periods in which he was not on loan with other clubs, the club repeatedly failed to comply with its financial obligations under the contract. In this respect, the player claims that several salaries remained outstanding and that he sent several default letters, however to no avail. As a result, on 1 March 2016, the player unilaterally terminated the contract, due to the outstanding salaries and the club's failure to timely provide him with a visa. The player held that these circumstances are to be considered as a reason to terminate the contract with just case.

22. The Chamber further noted that the club, on the other hand, rejected the claim put forward by the player and stated that part of the player's claim is time barred. In relation to the amounts claimed by the player and related to the period as from February 2014, the club holds that the player is not entitled to these amounts, since (a) the contract between the player and the club was suspended between January 2014 and December 2014 and (b) that as from December 2015, the player did not fulfil his contractual obligations anymore.

23. In continuation, the Chamber took into account that the player fully rejected the club's allegations, as well as that the club in its final reply insisted on the alleged

fact that the player did not fulfil its contractual obligations by missing training sessions and that he did not submit a copy of his passport, which made it for the club impossible to timely request a visa for the player.

24. In view of the aforementioned considerations, the members of the Chamber highlighted that the underlying issue in this dispute, considering the diverging position of the parties, was to determine as to whether on 1 March 2016, the contract had been terminated by the player with or without just cause, and to determine the consequences of said termination.

25. In this respect, the members of the Chamber first of all reiterated that the amounts claimed by the player related to the months of December 2012, January and December 2013, as well as January 2014 are to be considered time-barred (cf. no. II./15., II./16. , II./17. and II.18. above).

26. Moreover, the Chamber deemed it vital to outline that according to its well-established jurisprudence, in case the player is loaned to another club, the effects of the employment contract with the club of origin are temporarily suspended, unless the club of origin and the player have otherwise agreed. In relation to the salaries claimed for the months of February and December 2014, the Chamber analysed the loan agreement concluded between the club and Club G (cf. no. I./7. above) for the loan of the player in the period between 1 January 2014 and 31 December 2014 and noted that, even though said loan agreement is not co-signed by the player, it does not provide for amounts to be paid by the club to the player during the loan with Club G. Moreover, the player did not submit evidence that he and the club agreed upon amounts to be paid to him by the club, in the period during which he was on loan with Club G. As a result, and in line with its well-established jurisprudence, the Chamber rejected the part of the player's claim related to the salaries for months of February and December 2014, as during this period the player was on loan with Club G and his contract with the club was temporarily without effect.

27. Subsequently, the members of the Chamber focused their attention on the arguments brought forward by the parties, in relation to the salaries for the months of December 2015, as well as January and February 2016. According to the player, the club did not pay him these salaries without having a valid reason to not do so, however the club alleged that as from December 2015, the player did not participate in the club's training sessions, and that as a result, the player is not entitled to these salaries. Subsequently, the player argues that the club showed a lack of interest in his services, as it only sent him a visa and work permit in February 2016, which prevented him from entering the country of Country D between January 2015 and February 2016.

28. In this respect, the Chamber first of all noted that, the club – based on the contract (cf. points I./1. and I./3. above) in principle is obliged to pay the salaries related to the months December 2015, January 2016 and February 2016, as the player was not on loan with any other clubs. Moreover, from the information on file, it appears that the player went back to the club on 2 December 2015, offering his services to the club, however he was allegedly told that there was no work for him and subsequently returned to Country B. In this respect, the Chamber noted that the club did not contest the return of the player to Country D on 2 December 2015, however only arguing that it was the player's own choice to return to Country B and to not attend the club's training sessions, without providing any evidence of such allegations.

29. In addition, the Chamber noted that the club – after having invoked administrative reasons which made it allegedly impossible for it to timely request the necessary documents for the player - had sent the work permit and visa to the player on 6 February 2016. Subsequently, from the information on file, the members took note that on 8 February 2016, the player travelled to Country D and offered his services to the club, however that the club allegedly informed him about its intention to transfer him to another club. Moreover, in spite of the several requests of the player, his salaries for December 2015, as well as January and February 2016, remained unpaid.

30. Based on the foregoing circumstances, the members of the Chamber established that the club did not explicitly contest the player's allegations, and moreover, it could not prove its allegations that in the period between December 2015 and February 2016, the player refused to render his services under the contract. As a result, the members were of the firm opinion that the player's conduct in the matter at hand cannot be reproached, since from the information on file, it appears that the player did all in his power to return to the club after the loan and as soon as he got the visa, in order to offer his services. In this respect, the DRC deemed it appropriate to emphasize that according to its well-established jurisprudence, it is the club's responsibility to undertake all administrative measures to ensure that the player is provided a visa and/or work permit, in order to perform his work, as per the employment contract. Moreover, it appears that the club did not pay the player several outstanding salaries, as well as that from the club's behaviour, it could be established that it appeared to be no longer interested in the services of the player.

31. Consequently, and considering that the club had repeatedly and for a significant period of time been in breach of its contractual obligations towards the player, as well as that – considering the subsequent loans, the untimely organisation of the player's visa and the lack of reaction to the default notices - it was apparently no longer interested in the player's services, the Chamber decided that the player

had just cause to unilaterally terminate the employment contract on 1 March 2016.

32. In view of the above, the Chamber concluded that the club had to be held liable for the early termination of the employment contract with just cause by the player and was liable to compensate the player. In continuation, the Chamber focused its attention on the consequences of such termination.

33. In this regard, prior to establishing the consequences of the early termination of the contract by the club in accordance with art. 17 par. 1 of the Regulations, the Chamber held that it had to address the issue of any unpaid remuneration at the moment the contract was terminated by the club.

34. In relation the player's claim, and taking into account that the claimed salaries for December 2012, January 2013, December 2013 and January 2014 are to be considered time-barred (cf. no. II./15., II./16. , II./17. and II.18. above), as well as that there is no legal basis to grant the player the salaries for February and December 2014 (cf. no. II./26. above), the members of the Chamber focused their attention on the alleged outstanding salaries for December 2015, January and February 2016. In this respect, and in line with the fact that the club could not prove that the player did not fulfil his contractual obligations (cf. no. II./27., II./28., II./29. and II.30. above), the members established that three monthly salaries in the amount of USD 4,000 each were to be considered outstanding, as a result of which the club has to pay the amount of USD 12,000 as outstanding remuneration to the player.

35. In addition, the members of the Chamber determined that the club has to pay 5% interest *p.a.* on the amount of USD 12,000, as requested by the player, *i.e.*:

- 5% *p.a.* as of 16 January 2016 on the amount of USD 4,000;
- 5% *p.a.* as of 16 February 2016 on the amount of USD 4,000;
- 5% *p.a.* as of 16 March 2016 on the amount of USD 4,000.

36. Having established the above, the Chamber turned its attention to the question of the consequences of the unilateral termination of the contract by the player with just cause on 2 March 2016.

37. In continuation, the Chamber decided that, taking into consideration art. 17 par. 1 of the Regulations, the player is entitled to receive from the club compensation for breach of contract in addition to any outstanding salaries on the basis of the relevant employment contract.

38. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so,

the members of the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, 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 player 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.

39. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained 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 at the basis of the matter at stake.

40. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.

41. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract until 30 June 2016. Consequently, the Chamber concluded that the amount of USD 16,000 (*i.e.* the monthly remuneration due to the player between the months of March 2016 and June 2016) serves as the basis for the determination of the amount of compensation for breach of contract.

42. In continuation, the Chamber verified as to whether the player 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.

43. Indeed, the player found employment with the Club of Country B, Club E. In accordance with the pertinent employment contract with said club, valid as from 17 March 2016 until 16 December 2016, the player was entitled to receive a monthly salary of XXX 48,489,675, which amounts to approximately USD 2,339.

Therefore, in the period between 17 March 2016 and 30 June 2016, the player entitled to approximately USD 8,200.

44. As a result of the foregoing, the Chamber noted that the player was able to mitigate his damages in the relevant period to approximately USD 8,200.

45. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of USD 7,800 to the player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

46. In addition, taking into account the player's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided that the club must pay to the player interest of 5% *p.a*. on the amount of compensation, *i.e.* USD 7,800 as of the date of the claim (2 March 2016) until the date of effective payment.

47. Furthermore, the members of the Chamber established that any further request filed by the player is rejected.

48. The Chamber concluded its deliberations in the present matter by rejecting the counterclaim lodged by the club, as it has been established that the player had just cause to terminate the employment contract.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant / Counter-Respondent, Player A, is admissible.

2. The claim of the Claimant / Counter-Respondent is partially accepted.

3. The counterclaim of the Respondent / Counter-Claimant, Club C, is rejected.

4. The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent, **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of USD 12,000, plus 5% interest *p.a.* until the date of effective payment as follows:

   a. 5% *p.a.* as of 16 January 2016 on the amount of USD 4,000;
   b. 5% *p.a.* as of 16 February 2016 on the amount of USD 4,000;
   c. 5% *p.a.* as of 16 March 2016 on the amount of USD 4,000.

5. The Respondent / Counter-Claimant, has to pay to the Claimant / Counter-Respondent, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of USD 7,800 plus 5% interest *p.a.* on said amount as from 2 March 2016 until the date of effective payment.

6. In the event that the amounts due to the Claimant / Counter-Respondent in accordance with the above-mentioned numbers 4. and 5. are not paid by the Respondent / Counter-Claimant within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

7. Any further claim lodged by the Claimant is rejected.

8. The Claimant / Counter-Respondent is directed to inform the Respondent / Counter-Claimant 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 art. 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:

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:

Omar Ongaro
Football Regulatory Director

Encl.: CAS directives