

# 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  
arisen between the parties

## I. Facts of the case

1. On 15 July 2016, the Player of Country B, Player A (hereinafter: *the Claimant / Counter-Respondent* or *the player*) and the Club of Country D, Club C (hereinafter: *the Respondent / Counter-Claimant* or *the club*) signed an employment contract (hereinafter: *the contract*) valid as from the date of signature until 14 July 2018.
2. According to art. 4 of the contract, the player was entitled to the following remuneration:
  - a) USD 20,833 as monthly salary payable at the end of each month (par. 1);
  - b) USD 100,000 payable on 8 August 2016 (par. 2);
  - c) USD 100,000 payable on 1 October 2017 (par. 3).Furthermore, the club committed to provide the player with "*2 (Two) return business Class air ticket per year*"(par. 6).
3. Art. 10, point 4 of the contract stipulates that "*if the [club] need to terminate the contract the [player] shall receive only (2) Two salaries from the first party*".
4. On 1 November 2016, the player sent a letter to the club, by means of which he put it in default for the payment of USD 72,915.50, corresponding to half monthly salary for the month of July 2016 and to the monthly salaries from August to October 2016. By said letter, the player requested the payment of the aforementioned amount within 7 November 2016 and informed that, in case of non-payment, he was ready to terminate the contract on 8 November 2016.
5. By means of a letter dated 8 November 2016, the player terminated the contract and informed the club that he would leave on the same date.
6. On 12 November 2016, the club replied to the player's letter stating that the parties had agreed on the delayed payment of his outstanding salaries and it requested the player's bank details pursuant to their alleged agreement.
7. On 15 November 2016, the player lodged a claim in front of FIFA against the club for breach of contract, requesting the following:
  - a) USD 72,915.50 as outstanding salaries for the period from 15 July 2016 until 31 October 2016 plus interest of 5% *p.a.* since the relevant due dates;
  - b) USD 527,076.50 as compensation for breach of contract, corresponding to the remaining contractual value, plus interest of 5% *p.a.* since the date of the claim;
  - c) USD 3,255.28 as reimbursement of two flight tickets.

8. In his claim, the player explained that the club did not pay him the monthly salaries for more than three and an half months and argued that he terminated the contract with just cause.
9. Moreover, the player requested the reimbursement of two flight tickets, for him and his wife, amounting to USD 3,255.28.
10. In its reply, the club alleged that the player was aware of its financial difficulties and that he agreed with the club to delay the payment of the outstanding salaries. Nonetheless, according to the club, he eventually left the club without sending a request for the payment of such salaries. In particular, the club submitted a document - signed only by the club and dated 7 November 2016 - whereby the parties agreed on the termination of the contract and the club committed to pay the player the amount of USD 72,915 on 9 November 2016.
11. Furthermore, the club argued that, as the player agreed on the delayed payment and then left the club without requesting the payment, he terminated the contract without just cause. As a consequence thereof, the club alleged that it suffered losses when the player left and filed a counterclaim for the payment of USD 700,000 as compensation for said termination without just cause by the player.
12. In his replica and reply to the counterclaim, the player rejected the club's arguments and affirmed that he requested the payment of the outstanding remuneration and left the club pursuant to his letters dated 1 and 8 November 2016. What is more, the player emphasised that, in any event, as the due dates had been set out in the contract, he had no obligation to put the club in default.
13. Moreover, the player stressed that he neither agreed any delayed payment nor any termination with the club. In this respect, the player underlined that he did not sign any termination agreement with the club.
14. Furthermore, the player emphasized that the club's counterclaim had no legal basis, was abusive and inappropriate and hence requested its rejection.
15. In conclusion, the player pointed out that the club did not contest that the claimed amount was due and reiterated his initial requests.
16. In its duplica, the club insisted on its previous arguments, in particular that the claimed amount corresponded to the value of the contract and to the losses suffered by the club because of the termination of the contract without just cause by the player.

17. According to the information contained in the Transfer Matching System (hereinafter: *TMS*), the player entered into an employment contract with the Club of Country B, Club E on 20 April 2017. Club E submitted its comments on the present affair and stated that it did not induce the player to terminate the contract with the club as it met him only after he was back to Country B and had already filed his claim with FIFA. Moreover, Club E considered that the player had terminated his contract with the club with just cause, as the club owed him more than three and a half monthly salaries.
18. In accordance with the above-mentioned contract uploaded in TMS, valid as from 20 April 2017 until 20 July 2017, the player was entitled to receive from Club E a monthly salary of 1,000.

## II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as: *the 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 15 November 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 and 2 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 of Country B and a Club of Country D, with the intervention of a Club of Country B.
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 15 November 2016, the 2016 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, the Chamber noted that the parties entered into an employment contract valid as from 15 July 2016 until 14 July 2018, which entitled the player to a monthly salary of USD 20,833, plus the amount of USD 200,000 payable in two instalments of USD 100,000 on 8 August 2016 and on 1 October 2017 respectively. Furthermore, the club committed to provide the player with “2 (Two) return business Class air ticket per year”.
6. Moreover, the DRC acknowledged that it was undisputed that, on 1 November 2016, the player put the club in default of three and an half monthly salaries, for the period between July and October 2016 and corresponding to the amount of USD 72,915.50, and thereafter terminated the contract and left the club on 8 November 2016. What is more, the members of the DRC duly noted that it was also undisputed that, until that date, the player did not receive the payment of the claimed outstanding salaries.
7. In continuation, the DRC noted that the player alleged that the club breached the contract as it failed to pay the outstanding salaries for more than three and an half monthly salaries. Moreover, the player emphasized that the club also did not pay him two flight tickets and stressed that, in view of the above-mentioned circumstances, he terminated the contract with just cause.
8. Equally, the Chamber took note of the reply of the club, which first alleged that the player was aware of the club’s financial difficulties and agreed to delay the payment of the outstanding salaries. Moreover, the members of the DRC also noted that, according to the club, despite such alleged agreement, the player left the club without requesting the payment of the outstanding amount.
9. In view of the aforementioned circumstances, the club argued that the player terminated the contract without just cause and requested the amount of USD 700,000 as compensation for such alleged termination without just cause.
10. Furthermore, the members of the Chamber took note of the position of the player’s new club, Club E (hereinafter: *the intervening party* or *Club E*), which concurred on the player’s position and argued that it did not induce the termination of the contract as it met the player only after that he lodged his claim against the club.
11. 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 whether, on 8 November 2016, the contract had been terminated by the player with or without just cause, and to determine thereafter the consequences of said termination.

12. In this respect, the Chamber noticed that the club provided a copy of an agreement, signed by the club only, stipulating the alleged amicable termination of the contract and the club's commitment to pay the amount of USD 72,915 to the player on 9 November 2016. Having noticed the above, the members of the Chamber firstly 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 respective burden of proof. The application of the said principle in the present matter led the members of the Dispute Resolution Chamber to conclude that it was up to the club to prove that an agreement on the termination of the contract and on the delayed payment of the outstanding salaries had been indeed reached between the player and the club.
13. Having stated the above, the members of the Chamber concurred that the club did not substantiate his allegations, as it did not provide evidence that an agreement, signed by both parties, had been concluded in this respect between the player and the club. Indeed, the only copy of said agreement provided by the club is only signed by the latter. What is more, the player explicitly rejected having reached any kind of agreement with the club in order to early terminate the contract.
14. On account of the aforementioned, and considering that the club acknowledged the outstanding amount requested by the player, the Chamber deemed that the club failed to pay the due salary for more than three months without any valid reason and, therefore, was in breach of its contractual obligations towards the player for a significant period of time. Moreover, the Chamber recalled that the player put the club in default of payment before terminating the contract.
15. In view of the above, and taking into consideration the Chamber's longstanding jurisprudence in this respect, the members of the DRC decided that the player had just cause to unilaterally terminate the employment contract on 8 November 2016 and that, as a result, the club is to be held liable for the early termination of the employment contact with just cause by the player.
16. In continuation, having established that the club is to be held liable for the early termination of the employment contract with just cause by the player, 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 club is liable to pay to the player the amounts which

were outstanding under the contract at the moment of the termination, *i.e.* USD 72,915, corresponding to the salaries relating to half of the month of July and to the months from August to October 2016.

17. In addition, taking into consideration the player'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 player interest at the rate of 5% *p.a.* on the outstanding amount of USD 72,915, as follows:
  - a. 5% *p.a.* as of 1 August 2016 on the amount of USD 10,416;
  - b. 5% *p.a.* as of 1 September 2016 on the amount of USD 20,833;
  - c. 5% *p.a.* as of 1 October 2016 on the amount of USD 20,833;
  - d. 5% *p.a.* as of 1 November 2016 on the amount of USD 20,833.
18. Furthermore, as to the player's request for the reimbursement of flight tickets, the members of the Chamber first referred to art. 4 par. 6 of the contract, according to which it was the club's obligation to provide the player with "*2 (Two) return business Class air ticket per year*". In this regard, the DRC, having noticed that the aforementioned request was not contested by the club and in view of the evidence submitted by the player pursuant to art. 12 par. 3 of the Procedural Rules, decided that the club is liable to pay to the player the requested amount of USD 3,255, corresponding to the costs borne by the player for two flight tickets.
19. In continuation, the Chamber decided that, in accordance with art. 17 par. 1 of the Regulations, the club is liable to pay compensation for breach of contract to the player.
20. Along those lines, the Chamber pointed out 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 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.
21. In application of the relevant provision, the Chamber held therefore that it first of all had to clarify as to whether the contract contains 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 members of the Chamber recalled that art. 10, point 4 of the contract

stipulates that *"if the [club] need to terminate the contract the [player] shall receive only (2) Two salaries from the first party"*.

22. The members of the Chamber agreed that this clause is to the benefit of the club only, *i.e.* it is not reciprocal as it does not grant the same rights to the player and that, therefore, said clause cannot be taken into consideration in the determination of the amount of compensation. What is more, the members of the Chambers pointed out that said clause referred to a different case, *i.e.* the termination of the contract by the club, and, thus, was anyway not applicable to the case at stake.
23. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract until 14 July 2018 and concluded that the player would have received a total remuneration of USD 527,076, equal to the monthly salaries for twenty and an half months plus the payment set out in art. 4 par. 3 of the contract, had the contract been executed until its expiry date.
24. 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.
25. Indeed, the player found employment with the Club of Country B, Club E, with which he signed a contract valid from 20 April 2017 until 20 July 2017, with a monthly salary of 1,000. Consequently, the Chamber established that the value of the new employment contract amounted to 1,000, corresponding to approximately USD 305.
26. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the DRC decided that the club must pay the player the amount of USD 526,161 which, is to be considered a reasonable and justified amount of compensation for breach of contract in the matter at hand.
27. In addition and with regard to the player's request for interest, the Chamber decided that the player is entitled to 5% interest *p.a.* on said amount as requested, as of 15 November 2016.

28. The members of the Chamber concluded their deliberations by rejecting any further claim of the player.
29. Finally, the DRC also rejected the counterclaim lodged by the club, as it has been established that the player had just cause to terminate the contract.

### III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant / Counter-Respondent, Player A, is partially accepted.
2. The Respondent / Counter-Claimant, Club C, 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 72,915, plus 5% interest *p.a.* as follows:
  - a. 5% *p.a.* as of 1 August 2016 on the amount of USD 10,416;
  - b. 5% *p.a.* as of 1 September 2016 on the amount of USD 20,833;
  - c. 5% *p.a.* as of 1 October 2016 on the amount of USD 20,833;
  - d. 5% *p.a.* as of 1 November 2016 on the amount of USD 20,833.
3. 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 526,161 plus 5% interest *p.a.* as from 15 November 2016 until the date of effective payment.
4. In the event that the amounts plus interest due to the Claimant / Counter-Respondent in accordance with the above-mentioned numbers 2. and 3. 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.
5. The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent the amount of USD 3,255, **within 30 days** as from the date of notification of this decision.
6. In the event that the aforementioned amount due to the Claimant / Counter-Respondent in accordance with the above-mentioned number 5. is not paid by the Respondent / Counter-Claimant 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 FIFA's Disciplinary Committee for consideration and a formal decision.
7. Any further claim lodged by the Claimant / Counter-Respondent 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.
9. The counterclaim of the Respondent / Counter-Claimant is rejected.

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

For the Dispute Resolution Chamber:

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Omar Ongaro  
Football Regulatory Director

Encl.: CAS directives