

# Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 31 July 2013,

in the following composition:

**Geoff Thompson (England)**, Chairman  
**Joaquim Evangelista (Portugal)**, member  
**Ivan Gazidis (England)**, member

on the claim presented by the player,

**Player V**, from country B

*as Claimant*

against the club,

**Club C**, from country S

*as Respondent*

regarding an employment-related dispute arisen between the parties

## I. Facts of the case

1. The Player V, from country B (hereinafter: *player* or *Claimant*), was contractually bound to Club C, from country S (hereinafter: *club* or *Respondent*), as from June 2011 until the end of the 2013-14 season in the context of a loan to the club.
2. On 25 June 2012, the Claimant and the Respondent signed an agreement by means of which they terminated the employment contract by mutual agreement (hereinafter: *termination agreement*).
3. In accordance with the termination agreement, the club undertook to pay to the player the amount of EUR 275,000 net in the three following instalments:
  - a. EUR 75,000 no later than 1 October 2012;
  - b. EUR 100,000 no later than 1 December 2012;
  - c. EUR 100,000 no later than 1 January 2013.
4. According to clause 4 of the termination agreement, any delay or non-compliance with the aforementioned payment schedule will result in a penalty of "20% of the debt" payable by the club to the player plus interest of 5% *p.a.*, calculated *pro rata die*, and the "anticipation of the expiration dates of the instalments yet due".
5. Clause 5 of the termination agreement stipulates that in the event that the parties tolerate any infringement of the clauses or decide not to enforce the rights acquired by means of the termination agreement, this shall not be considered an alteration of the agreement nor waiver of any kind, but only an act of indulgence.
6. On 14 November 2012, the player lodged a claim against the club in front of FIFA maintaining that the club had failed to remit the first instalment under the termination agreement. Therefore, the player held that in accordance with clause 4 of the termination agreement, he is entitled to receive the full amount of EUR 275,000 at once, plus EUR 55,000 as the 20% penalty for non-compliance as well as 5% interest *p.a.* starting as from the time limit for payment of the first instalment, which he claims is 1 September 2012.

7. Consequently, the player asks that the club be ordered to pay the aforementioned amounts plus legal and procedural costs and that sanctions be imposed on the club.
8. In reply to the claim, the club admitted that it owes the amount of EUR 275,000 to the player and asked to be granted another payment schedule due to its alleged financial difficulties.
9. In addition, in the event that the parties would not find an amicable settlement in this sense, the club rejects the payment of the 20% penalty amount, as it deems that it is not realistic, bearing in mind that the applicable interest of 5% already constitutes a penalty. In addition, the club points out that the parties came to an agreement to terminate the employment contract by mutual consent due to the fact that not only the club was in breach of contract by being in delay of payment of salaries, but also due to a breach of contract by the player by having left for country B. In addition, according to the club, disciplinary proceedings had been opened against the player.
10. The new payment schedules granted to the club by the player during the proceedings in the matter at hand were not respected by the club and therefore, the player insists on his claim including the payment of the 20% penalty, which was rejected by the club.

## **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 case at hand. In this respect, it took note that the present matter was submitted to FIFA on 14 November 2012. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 par. 2 and par. 3 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 B player and a country S club.

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 par. 2 of the Regulations on the Status and Transfer of Players (editions 2012 and 2010), and considering that the present claim was lodged on 14 November 2012, the 2010 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 the above-mentioned facts as well as the arguments and the documentation submitted by the parties.
5. First and foremost, the Chamber acknowledged that the parties had terminated their employment relation by mutual consent by entering into the termination agreement on 25 June 2012. In accordance with the termination agreement, the Respondent *inter alia* undertook to pay to the Claimant the amount of EUR 275,000 in three instalments.
6. In continuation, the members of the Chamber noted that according to the Claimant, the Respondent failed to remit the first instalment of EUR 75,000, which fell due on 1 October 2012. Consequently, on the basis of clause 4 of the termination agreement, the Claimant asks that the Respondent be ordered to pay the full amount of EUR 275,000 at once as well as the amount of EUR 55,000 relating to the 20% penalty fee plus 5% interest *p.a.* as of expiry of the time limit for payment of the first instalment.
7. The Chamber took into account that the Respondent, for its part, admits that it owes the amount of EUR 275,000 to the Claimant and that, thus, the Respondent implicitly confirms that it has not made any payment to the Claimant. It was further noted that the Respondent rejects the claim of the Claimant relating to the 20% penalty fee in the amount of EUR 55,000, since, so the Respondent deems, the contractual interest of 5% already constitutes a penalty.
8. In view of the dissenting viewpoint of the parties with respect to the applicability of the penalty fee contained in clause 4 of the termination agreement, the Chamber, to start with, focussed its attention on said contractual clause.
9. After due deliberation, the members of the Chamber concluded that penalty clauses may be freely entered into by the contractual parties and may be considered acceptable, in the event that the pertinent written clause meets certain criteria such as proportionality and reasonableness. In this respect, the Chamber highlighted that in order to determine as to whether a penalty clause is

to be considered acceptable, the specific circumstances of the relevant case brought before it shall also be taken into consideration.

10. In the specific case at hand, the members of the Chamber deemed that the penalty fee of 20% of the total outstanding amount, which the parties contractually agreed upon in the context of terminating the employment relation, is both proportionate and reasonable in the case at hand.
11. In continuation, the Chamber turned its attention to the argument of the Respondent, according to which the penalty fee shall not be applied, since the 5% interest *p.a.* clause included in the termination agreement in itself constitutes a penalty.
12. In this regard, the Chamber outlined that such interest clause was explicitly and contractually agreed upon between the parties apart from the 20% penalty fee. In addition, the members of the Chamber found that this specific interest clause of 5% *per annum* is not disproportionate or unreasonable in the case at hand. Therefore, the Chamber decided to reject the Respondent's argument in this respect.
13. On account of all of the above, the Chamber decided that said contractual 20% penalty fee is valid and applicable in the present matter.
14. For the sake of good order, the Chamber wished to mention that the Respondent's additional argument related to the purported situation prior to the conclusion of the termination agreement are allegations only and that those allegations are not the subject matter of the present proceeding, which proceeding, in fact, is based on the Claimant's failure to fulfil its obligations according to the termination agreement.
15. Consequently, 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 EUR 275,000 plus interest at the rate of 5% *p.a.* as from 2 October 2012, *i.e.* the date on which the total amount of EUR 275,000 fell due in the light of the Respondent's failure to pay the first instalment in a timely manner (cf. clause 4 of the termination agreement).
16. In addition, the Chamber decided that the Respondent is liable to pay to the Claimant the amount of EUR 55,000 relating to the 20% penalty fee in accordance with clause 4 of the termination agreement.

17. 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.
18. 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, Player V, is partially accepted.
2. The Respondent, Club C, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount EUR 275,000 plus interest at the rate of 5% *p.a.* applicable as of 2 October 2012 until the date of effective payment.
3. The Respondent has to pay to the Claimant the additional amount EUR 55,000 within 30 days as from the date of notification of this decision. In the event that the amount of EUR 55,000 is not paid within the stated time limit, interest at the rate of 5% *p.a.* will fall due over the said amount as of expiry of the fixed time limit until the date of effective payment.
4. In the event that the amounts plus interest due to the Claimant are not paid by the Respondent 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. Any further request filed by the Claimant is rejected.

6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

\*\*\*\*\*

**Note relating to the motivated decision (legal remedy):**

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

For the Dispute Resolution Chamber:

---

Jérôme Valcke  
Secretary General

Encl.: CAS directives