

Decision of the Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 7 July 2015,

by **Theo van Seggelen** (Netherlands), DRC judge,

on the claim presented by the player,

Player A, country B,

as Claimant

against the club,

Club C, country D

as Respondent

regarding an employment-related dispute arisen between the parties

I. Facts of the case

1. On 28 August 2013, the player from country B, Player A (hereinafter: *the Claimant*), and the club from country D, Club C (hereinafter: *the Respondent*), concluded an employment contract (hereinafter: *the contract*), valid from the date of signature until 30 June 2014.
2. According to clause 3 of the contract, the Claimant was entitled to receive *inter alia* a monthly salary in the amount of USD 21,600.
3. On 19 May 2014, the parties concluded an “*Agreement*” (hereinafter: *the termination agreement*), by means of which they agreed that the Claimant would be entitled to receive the amount of USD 19,483 until 1 June 2014.

Equally, the termination agreement stipulated that “*the present Agreement will be considered fulfilled immediately after the mentioned amount will be transferred to the following bank account provided by Mr Player A [the Claimant] (...)*”.

4. On 21 August 2014, the Claimant submitted a claim against the Respondent in front of FIFA, requesting the payment of the amount stipulated in the termination agreement totalling USD 19,483 plus 5% interest *p.a.* as from 1 June 2014.
5. In this regard, the Claimant explained that he contacted the Respondent on various occasions in order to demand the amount agreed upon in the termination agreement, however, without allegedly receiving an answer and/or payment.
6. In its response to the claim, the Respondent confirmed having concluded the termination agreement with the Claimant, however, rejected the Claimant’s claim and stated having made the relevant payment amounting to USD 19,483 on 12 June 2014. In this regard, the Respondent provided a copy of a SWIFT document indicating the amount of USD 19,483.
7. In his replica, the Claimant denied having received any payment from the Respondent. In this respect, the Claimant pointed out that the SWIFT document provided by the Respondent stated that the alleged payment was for “*Payment to*

the Loan Agreement DD 19". Equally, the Claimant also emphasised that the Respondent allegedly purposely concealed the part of the SWIFT document which indicated the Beneficiary Customer Name & Address. Lastly, referring to the general legal principle of burden of proof, the Claimant emphasised that the Respondent failed to comply with it since the provided evidence is *"very unclear and really contradictory"* and it *"seems very suspicious and with clear indications it was on purposes forged"*. Summing up, the Claimant asked FIFA to *"dismiss the response addressed by the [club] [...] since inter alia the "bank swift transfer" provided did not contain the necessary information to carry the burden of proof"*.

8. In its final position, the Respondent reiterated its previous arguments and explained that *"the 'Loan Agreement' is an agreement between Club C and company E through which our club used to transfer amounts. As it is obvious from the SWIFT document, the amount was actually remunerated by company E. Therefore, we hereby attach to this letter official document by the above-mentioned company that the payment was made 'with the instruction, in name and behalf of Club C'"*. Finally, the Respondent stated having fulfilled its burden of proof by submitting the SWIFT document as well as the *"confirmation"* signed by company E's CEO confirming the payment of the amount of USD 19,483 on 12 June 2014 to the Claimant. Therefore, according to the Respondent, the burden of proof lies on the Claimant since he failed to prove that he did not receive any amount from the Respondent.

II. Considerations of the DRC judge

1. First of all, the DRC judge analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was submitted to FIFA on 21 August 2014. Consequently, the 2014 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) are applicable to the matter at stake (*cf.* art. 21 of the Procedural Rules).
2. Subsequently, the DRC judge referred to art. 3 par. 2 and 3 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 2015), the DRC judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player

from country B and an club from country D, and which value does not exceed CHF 100,000.

3. Furthermore, the DRC judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2014 and 2015), and considering that the present claim was lodged in front of FIFA on 21 August 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 DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. In this respect, the DRC judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the DRC judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence which it considered pertinent for the assessment of the matter at hand.
5. In this respect, and in first instance, the DRC judge recalled that on 28 August 2013 the parties had signed an employment contract valid from the date of signature until 30 June 2014.
6. The DRC judge also took due note of the amicable termination of the contract by means of a termination agreement dated 19 May 2014 and signed by both parties. The DRC judge also pointed out that, pursuant to said termination agreement, the Respondent undertook to pay the Claimant the amount of USD 19,483 by 1 June 2014 and that the termination agreement was to be fulfilled only after the payment of the relevant amount to the Claimant's bank account.
7. Subsequently, the DRC judge observed that the Claimant seized FIFA, stating that the Respondent had not fulfilled its obligation of payment as established in the said termination agreement. Therefore, the Claimant requested to be paid the relevant amount of USD 19,483 as well as interest at the rate of 5% starting as of 1 June 2014.
8. Furthermore, the DRC judge noted that the Respondent asserted that the said amount was paid to the Claimant on 12 June 2014 and provided in this regard a SWIFT document, the beneficiary's name of which was concealed, as well as a letter from a company, which asserted having proceeded to the payment of the amount of USD 19,483 to the Claimant, *"on behalf of"* the Respondent.

9. On account of the above, the DRC judge was eager to recall the basic principle of burden of proof contained in 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 burden of proof. In this respect, the DRC judge stressed that the Respondent did not provide clear evidence that the due amount was effectively transferred to the Claimant's bank account.
10. In continuation, the DRC judge wished to highlight that the termination agreement signed by the Claimant and the Respondent clearly provides that the amount foreseen in said termination agreement is to be paid by the Respondent to the Claimant's bank account, and not by the Respondent to a company for a subsequent transfer to the Claimant.
11. In view of the aforementioned, the DRC judge considered that the Claimant is entitled to the unpaid amount of USD 19,483 and therefore concluded that the Respondent is liable for the payment of said amount to the Claimant.
12. In continuation and with regard to the Claimant's request for interest, the DRC judge decided that the Respondent must pay to the Claimant an interest of 5% *p.a.* on the amount of USD 19,483 as from 2 June 2014 until the date of effective payment.
13. The DRC judge concluded his deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

III. Decision of the DRC judge

1. The claim of the Claimant is partially accepted.
2. The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of USD 19,483 plus 5% interest *p.a.* as from 2 June 2014 until the date of effective payment.
3. In the event that the aforementioned amount 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 DRC judge 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
www.tas-cas.org

For the DRC judge:

Markus Kattner
Acting Secretary General

Encl. CAS directives