Decision of the

Dispute Resolution Chamber

passed in Zurich, Switzerland, on 13 July 2017,

in the following composition:

Geoff Thompson (England), Chairman
Mario Gallavotti (Italy), member
Theo van Seggelen (Netherlands), member

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 10 August 2016, the Futsal Player of Country B, Player A (hereinafter: the *Claimant*), and the Futsal Club of Country D, Club C (hereinafter: the *Respondent*), concluded an employment contract (hereinafter: the *contract*), valid as of the date of signature until 30 April 2018.

2. In this respect, art. 8.2 of the contract "*establishes a probation period for the player of 3 months as from the beginning of the training sessions*" (free translation).

3. Pursuant to the contract, the Claimant was entitled to receive the following remuneration:
- 2016-17 season: nine equal monthly instalments of USD 6,000 from August 2016 until April 2017;
- 2017-18 season: nine equal monthly instalments of USD 6,000 from August 2017 until April 2018.

4. In this regard, the contract specifies that "*the* [Respondent] *will pay an advance for the month of April 2017, equivalent to 40%, and in the amount of USD 2,400, within five days of the signature of the present contract*" (free translation).

5. In continuation, the contract stipulates that from May 2017 until July 2017, the Claimant will receive an amount equivalent to 40% of his monthly salary.

6. Furthermore, art. 10.2 states that "*any other relation between the parties, which is not foreseen by this contract, will be governed by the law of the Republic of Country D (…), and the statutes of FIFA, UEFA and Football Federation E*" (free translation).

7. On 3 November 2016, the Respondent informed the Claimant that the contractual relationship would be terminated as from 10 November 2016 due to his failure to pass the probation period in accordance with Labour Law of Country D. In the termination notice, the Respondent also outlines that "*when* [the Claimant] *arrived at the club,* [it] *realised that* [he] *had a knee injury, which* [he] *did not disclose to the club*" (free translation).

8. On 10 January 2017, the Claimant lodged a claim against the Respondent for breach of contract, claiming the amount of USD 93,400, plus interests, corresponding to the residual value of the contract.

9. In his claim, the Claimant explains that after he suffered an injury in October 2016, the Respondent decided to terminate the contract. In this regard, the Claimant recalls the jurisprudence of the DRC according to which low performance or injuries do not constitute just causes to terminate a contract.

Equally, the Claimant points out that a clause establishing a probation period during which the Respondent can unilaterally terminate the employment relationship is potestative and therefore null and void.

10. In its reply, the Respondent explains that in accordance with art. 10.2 of the contract, Law of Country D is applicable to the matter. In this regard, the Respondent outlines that a clause such as art. 8.2 of the contract is valid pursuant to Law of Country D. Furthermore, the Respondent stresses that it complied with the termination procedure established by Law of Country D. Furthermore, the Respondent highlights that the Claimant agreed on the content of the contract, including its art. 8.2.

11. In addition, the Respondent alleges that pursuant to Law of Country D, the Claimant was also entitled to terminate the contract by giving a one-month notice.

12. In continuation, the Respondent emphasises that the reason why the Claimant did not pass the probation period was his level of performance and not an alleged injury.

13. Having been invited to do so, the Claimant informed FIFA that he had not signed any new employment contract after the termination of his contract with the Respondent.

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 10 January 2017. Consequently, the 2017 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 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) and art. 11 of Annexe 7 of the latter Regulations, 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 Futsal Player of Country B and a Futsal Club of Country D.

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 (edition 2016), and considering that the present claim was lodged on 10 January 2017, the 2016 edition of said regulations (hereinafter: *the 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. 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. In this respect, the members of the Chamber acknowledged that the parties were contractually bound by means of an employment contract valid as from 10 August 2016 until 30 April 2018.

6. Subsequently, the Chamber took into account that, according to the Claimant, the Respondent had prematurely terminated the contract in writing on 10 November 2016. The DRC observed that said fact was confirmed by the Respondent.

7. In continuation, the Chamber went on to deliberate whether the facts of the case constituted a just cause for the Respondent to prematurely terminate the employment contract.

8. In this respect, the Chamber took due note of the Respondent's argumentation that it had terminated the contract with just cause on the basis of arts. 8.2 and 10.2 of the contract as well as Law of Country D. In particular, the Chamber remarked that according to the Respondent, the Claimant failed to successfully pass the probation period.

9. On the other hand, the members of the DRC noted that the Claimant argues that the termination was based on a knee injury suffered in October 2016. In this regard, the Claimant insists that incapacity is not deemed as a valid ground for termination of a contract.

10. Against such background and as a preliminary remark, the DRC wished to recall its well-established and longstanding jurisprudence which dictates that when deciding a dispute before the DRC, FIFA's regulations prevail over any national law chosen by the parties. In this regard the Chamber emphasised that the main objective of the FIFA regulations is to create a standard set of rules to which all the actors within the football community are subject to and can rely on. This

objective would not be achievable if the DRC would have to apply the national law of a specific party on every dispute brought to it. This should apply, in particular, also to the termination of a contract. In this respect, the DRC underlined that it is in the interest of football that the termination of contract is based on uniform criteria rather than on provisions of national law that may vary considerable from country to country. Therefore, the Chamber deems that it is not appropriate to apply the principles of a particular national law to the termination of a contract but rather the Regulations, general principles of law and, where existing, the Chamber's well-established jurisprudence.

11. In addition, and referring to art. 12 par. 3 of the Procedural Rules, the Chamber deemed it important to point out that, in any case, the Claimant did not present the relevant Labour Law of Country D, thereby failing to satisfactorily carry the burden of proof regarding the lawfulness of probation periods under such law.

12. In continuation, and notwithstanding the above, the Chamber deemed it crucial to determine the actual reason behind the termination. In order to do so, the Chamber proceeded to the analysis of the wording used in the termination notice. In particular, the Chamber observed that in such termination notice, the Respondent emphasised that "*when* [the Claimant] *arrived at the club,* [it] *realised that* [he] *had a knee injury, which* [he] *did not disclose to the club*". In view of the above, the DRC came to the conclusion that the Respondent's decision to terminate the contract appeared to be motivated by the Claimant's medical condition, and not in an objective decision not to continue with the labour relationship after the relevant probation period.

13. The foregoing being established, the Chamber was eager to emphasise that, according to its well-established jurisprudence, and as a general rule, a player's injury does not constitute a just cause in the sense of art. 14 of the Regulations for a club to terminate a contract. Moreover, the Chamber, referring to the content of art. 18 par. 4 of the Regulations, insisted that once the parties concluded an employment contract, they had the obligation to implement its terms and a club could not unilaterally question the validity of the contract during its course based on the physical state of the player.
14. Furthermore, the Chamber stressed that it was the obligation of the Respondent to act with due diligence and perform all the necessary exams to ascertain the health of the Claimant prior to signing the contract.

15. On account of all of the above, the members of the Chamber unanimously reached the conclusion that the Respondent terminated the contract without just cause on 10 November 2016 and it is therefore liable to pay compensation to the Claimant.

16. Prior to establishing the consequences of the breach of contract without just cause by the Respondent in accordance with art. 17 par. 1 of the Regulations, the Chamber deemed it important to recall that the Claimant acknowledged that his remuneration until November 2016 was paid by the Respondent.

17. Having stated the above, the Chamber focused its attention on the calculation of the amount of compensation payable to the Claimant by the Respondent 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 Claimant 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.

18. In application of the relevant provision, the Chamber held that it first 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.

19. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent to the Claimant 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.

20. In order to estimate the amount of compensation due to the Claimant in the present case, the members of the Chamber first turned their attention to the remuneration and other benefits due to the Claimant under the existing contract and/or any other earnings made within the residual contractual period, which criterion was considered by the Chamber to be essential. The members of the Chamber deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows the Chamber to take into account both the existing contract and any subsequent earnings, if any, in the calculation of the amount of compensation.

21. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the Claimant under the terms of the employment contract

until 30 April 2018, taking into account that 40% of the Claimant's salary for April 2017, *i.e.* USD 2,400, has already been paid as advance payment. Consequently, the Chamber concluded that the amount of USD 92,800 serves as the basis for the determination of the amount of compensation for breach of contract.

22. In continuation the Chamber verified as to whether the Claimant 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.

23. The Chamber noted that it appears from the documentation on file that the Claimant did not sign any contract with a new club within the relevant period. Thus, the Claimant had apparently not been able to mitigate damages. In this context, the DRC declared that there is no remuneration to be taken into account in order to mitigate the amount of compensation for breach of contract.

24. Consequently and bearing in mind all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Respondent must pay the amount of USD 92,800 to the Claimant, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

25. Furthermore, taking into consideration the Claimant's claim, the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* on the amount of USD 92,800 as from 10 January 2017 until the date of effective payment.

26. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further request filed by the Claimant is rejected

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player A, 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 of USD 92,800 plus 5% interest *p.a.* on said amount as from 10 January 2017 until the date of effective payment.

3. In the event that the abovementioned amount plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

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

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

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Note relating to the motivated decision (legal remedy):

According to 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
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Tel: +41 21 613 50 00
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For the Dispute Resolution Chamber:

Omar Ongaro
Football Regulatory Director

Encl: CAS directive