

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 17 August 2017,

in the following composition:

Thomas Grimm (Switzerland), Deputy Chairman
Eirik Monsen (Norway), member
Pavel Pivovarov (Russia), 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
between the parties

I. Facts of the case

1. On 1 October 2014, the Player of Country B, Player A (hereinafter: *the player* or *Claimant*) and the Club of Country D, Club C (hereinafter: *Club C* or *Respondent*) signed an employment contract, valid as from 1 October 2014 until 30 June 2018 (hereinafter: *the contract*).
2. According to the contract, the player was entitled to receive a yearly salary of EUR 600,000 net for each of the seasons 2014-2015, 2015-2016, 2016-2017 and 2017-2018.
3. Further, article 3 of the contract contains the following clause: '*The parties [...] are committed to fully comply with the stipulations agreed upon in the relevant collective bargaining agreement [...], including, non-exhaustively, the following provisions [...] Article 3.4 and 3.6 [...] art. 5.1 [...]*'.
4. On 1 August 2016, Club C and the Club of Country E, Club F (hereinafter: *Club F*) concluded a transfer agreement for the definitive transfer of the player from Club C to Club F for a transfer compensation of EUR 3,500,000.
5. Article 6 of the transfer agreement holds the following: '*The Contract is suspensively conditioned to the signature between Club F and the Player of an employment agreement*'.
6. Article 9 of the transfer agreement contains the following clause: '*The player signs this agreement for acceptance and states not to have anything to claim from Club C with reference to the employment agreement filed at League of Country D*'.
7. On 8 November 2016, the player lodged a claim before FIFA against Club C, claiming outstanding remuneration in the total amount of EUR 120,000 to be paid by Club C, which according to the player corresponds to the outstanding salaries for the months of June and July 2016. Further, the player requested 5% interest p.a. as from 6 October 2016, as well as legal costs to be paid by Club C and the imposition of sporting sanctions, or any other sanction the DRC deems relevant based on art. 12bis par. 4 FIFA Regulations, on Club C.
8. In his claim, the player explains that except for the 2014-2015 season, he received his yearly salary in ten instalments of EUR 60,000 each. Furthermore, the player states that '*in late July 2016 or thereabout*', he was informed by Club C that Club F was interested in concluding a contract with him. After negotiations between Club C and Club F in a hotel in a City of Country D, on 1 August 2016, '*around 10pm*', the player was informed that a transfer agreement was concluded between Club C and Club F. According to the player, also on 1 August 2016, '*around 10.30pm*', he was asked by the clubs to come to the hotel,

to co-sign the transfer agreement, which the player confirms to have done. In addition, the player explains that on 2 August 2016, he signed an employment contract with Club F.

9. What is more, the player holds that at the moment he co-signed the transfer agreement, his monthly salaries for June and July 2016 in the amount of EUR 60,000 each were outstanding. After having asked for the payment of these salaries *'in late September 2016'*, according to the player, Club C refused to pay said salaries, holding that the player waived his right to receive these salaries, based on article 9 of the transfer agreement signed on 1 August 2016. (cf. point 6. above).
10. Furthermore, on 6 October 2016, the player put Club C in default for the payment of the outstanding salaries, stating that he did not accept argument of the Club C that he waived his right to receive the salaries for June and July 2016 and providing Club C with a 10 days' deadline to pay him the requested amounts, however to no avail.
11. Subsequently, the player explains that his claim has to be accepted, since (a) Club C was in breach of art. 12bis FIFA Regulations, (b) the transfer agreement was not binding on the player, (c) article 9 of the transfer agreement is *'inconsistent and repugnant with the object and intention of the Transfer Agreement'* and (d) article 9 of the transfer agreement is in any case to be considered null and void.
12. Regarding the breach of art. 12bis, the player explains that Club C without any plausible explanation, failed to pay him two monthly salaries.
13. With respect to the transfer agreement, the player refers to article 10 par. 1 of the FIFA Regulations and the jurisprudence of the DRC and CAS, based on which – according to the player – *'his signature does not change the scope, object and purpose of the transfer agreement'*. As a result, the player concludes that the transfer agreement is not binding on him.
14. In relation the article 9 of the transfer agreement, the player refers to article 18 of the Swiss Code of Obligations and argues that the transfer agreement *'should in this regard be discerned by reading it as a whole and not merely in isolation of clause 9'*. According to the player, if one reads the transfer agreement as a whole, this would lead to the conclusion that while signing the transfer agreement, it was not the intention of the parties to agree upon the waiving of the rights of the player to receive his monthly salaries.

15. Further, the player states that it was never the object and intention of the transfer agreement to conclude that the player would waive several rights. This also follows from:
- the commercial background of the transfer agreement, which was focused at transferring the player for an amount of EUR 3,500,000 from Club C to Club F;
 - the context of the transfer agreement, which contains 8 clauses regarding the rights and obligations of Club C and Club F, and only 1 clause referring to rights of the player;
 - the circumstances, behaviour and backgrounds of the parties, based on which criteria, the player states that it is clear that on 1 August 2016, Club C never addressed the issue of unpaid salaries and only asked the player to co-sign the transfer agreement.
16. Moreover, the player argues that article 9 of the transfer agreement is null and void, because it contravenes the mandatory provision of article 341 Swiss Code of Obligations, and also states that article 9 of the transfer agreement contravenes the principle of good faith, and that it is vague, ambiguous and unenforceable. In this respect, the player explains that the clause does not explicitly refer to the unpaid salaries for June and July 2016, nor to the exact amount due or the reasons for the player to waive his rights in this period.
17. In its reply, Club C denies the player's allegations and argues that the player wanted to leave Club C, even after he was offered an extension of the contract. Further, Club C argues that the player was very well aware of the contents of the transfer agreement, since the negotiations already started in the beginning of July 2016 and moreover, because of the fact that he player co-signed the transfer agreement on 4 August 2016, three days after the initial signing of the transfer agreement by Club C and Club F. In this respect, Club C submitted two witness statements, from Negotiator G (negotiator on behalf of Club F) and Secretary H (General Secretary of Club C) as well as a copy of an interview the player had with *'the Press of Country D'*, allegedly confirming said circumstances.
18. Furthermore, Club C holds that in the transfer agreement, it was also agreed that *'Club F would take care of all the outstanding sums due to the Player by Club C, with the relevant Player's release/waiver in favour of Club C'*. Club C argues that it follows from article 9 of the contract that the parties implicitly agreed that the player would waive his rights to receive his salaries of June and July 2016. Moreover, Club C states that it never breached art. 12bis of the FIFA Regulations, as the player explicitly waived his right to receive the salaries for June and July 2016. Further, Club C states that it is *'standard practice within the football environment to settle any pending debts/right/claim with a player at the same time when he is transferred to another club'*. In addition, Club C holds

that it did not ask the player to sign the transfer agreement '*as an expression of his consent*' to the transfer, since such consent was already expressed by the player by signing an employment contract with Club F.

19. Moreover, Club C is of the opinion that the clause in article 9 of the transfer agreement is valid, since the FIFA Regulations are applicable, as well as the principle of *pacta sunt servanda*. Furthermore, Club C states that the wording of article 9 of the transfer agreement is self-explanatory and that the reasons why the player's signature was on the transfer agreement are '*expressly addressed*'. Subsequently, Club C argues that the player does not submit proof of which mandatory provision of the contract '*would have been violated through the player's execution of the transfer agreement in light of article 9 thereof*' and that the waiver can be upheld, because the player received '*a significant increase of salary when he moved to Club F*'.
20. In addition, Club C states that the player was only entitled to a monthly salary of EUR 50,000 net, as the yearly amount of EUR 600,000 was payable in 12 equal instalments of EUR 50,000 each, which also follows from the fact that the sporting season in Country D runs from 1 July until 30 June.
21. In his replica, the player holds that he never met or spoke with Negotiator G and Secretary H and that as a result, their statements are '*completely irrelevant*'. Further, the player alleges that the date of 4 August 2016 on the transfer agreement is handwritten by either Club C or Club F on the contract, and that in the period between 1 and 4 August 2016, he first had to undergo a medical examination with Club F.
22. In addition, the player explains that Club C '*made a habit of delaying the Claimant's salaries and making partial payments [...]*' and that Club C continued to pay him amounts belonging to the 2015-2016 season until 29 September 2016, on which date an amount of EUR 13,417 was paid to him. As a result, the player concludes that Club C with making payments long after the transfer agreement was concluded, effectively confirmed that the outstanding monies owed by Club C to the player, were still payable.
23. Further, the player explains that in his opinion, an employer who still has contractual debts towards his employee, '*[...] can only discharge itself from its contractual duties through a settlement agreement exclusively entered into with the employee [...]*'. With respect to the transfer agreement, the player argues that for '*a reasonable person*' it would be clear that the only purpose of said agreement was to make arrangements on the definitive transfer of the player from Club C to Club F for the amount of EUR 3,500,000.

24. Moreover, the player holds that from the bank statements he submitted (cf. point 22. above), it follows that in relation to the 2015-2016 season Club C paid him the total amount of EUR 496,818 out of the amount of EUR 600,000 that was due. As a result, the player insists on his original claim, however amends the amount to be paid Club C to EUR 103,182.
25. In its duplica, Club C denies the arguments of the player, stating that *'its consent to the transfer of the player to Club F was conditional upon said waiver'* and that it is not true that the player did not have the time to understand the meaning and the consequences of the transfer agreement.
26. Further, Club C draws the attention to the fact that the player and Secretary H, the General Secretary of Club C, met *'on a nearly daily basis throughout his stay of 5 years with Club C'*. In addition, Club C argues that the explicit wording of article 9 of the transfer agreement clarifies the fact that the player had co-signed the transfer agreement.
27. Moreover, Club C denies that it manually wrote the date of 4 August 2016 on the transfer agreement. With respect to the payment of EUR 13,417 made on 29 September 2016 to the player, Club C explains that this payment is not related to the waiver signed by the player (which only refers to contractual payments), but that this payment was made in line with article 4.4 the Collective Bargaining Agreement between the Club C and players. As such, the payment of EUR 13,417 had nothing to do with the contract.
28. Finally, Club C concludes that the player *'waived by signing the transfer agreement'* the amount of EUR 100,000, and not EUR 120,000 as the player states in his claim.
29. After the closure of the investigation phase, the player submitted unsolicited correspondence, arguing that the payment of EUR 13,417 was made in line with the contract, since *'bonuses were as a matter of fact part of the remuneration due to the Claimant as spelt out in the Contract'*.

II. Considerations of the Dispute Resolution Chamber

1. First, 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 the present matter was submitted to FIFA on 8 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 par. 1 and par. 2 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 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 an 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 2 of the Regulations on the Status and Transfer of Players (2016), and considering that the present claim was lodged on 8 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. The members of the Chamber first of all acknowledged that the player and Club C signed an employment contract, originally valid as from 1 October 2014 until 30 June 2018. Furthermore, the DRC noted that a transfer agreement dated 1 August 2016 was signed by the player, Club C and Club F, for the definitive transfer of the player from Club C to Club F. Moreover, the members of the DRC acknowledged that the player confirmed to have signed, on 2 August 2016, an employment contract with Club F.
6. The Chamber then reviewed the claim of the player, who maintains that he co-signed the transfer agreement dated 1 August 2016 in relation to his transfer to Club F, however that he was still entitled to claim from Club C (parts of) the two monthly salaries for June and July 2016, which allegedly remained outstanding. Furthermore, the Chamber took note that the player holds that he did not waive his rights to receive said salaries by co-signing the transfer agreement, as article 9 of said agreement cannot have legal effect against him, as said clause has to be considered null and void.
7. In continuation, the members of the Chamber noted that Club C, for its part, rejected the claim of the player and pointed out that by signing the transfer agreement, the player waived all his financial claims towards Club C under the employment contract signed on 1 October 2014. In this regard, Club C, apart from its position that the player was fully aware of the contents of the transfer agreement, invoked that the clause inserted in article 9 of the transfer

agreement is self-explanatory and clear. What is more, the player confirmed that Club C informed him already in July 2016 about Club F's interest in his services. As a result, Club C holds that by signing the transfer agreement without pressure and on his own free will, the player acknowledged that he had no further financial claims towards Club C in connection with the employment contract agreed between the parties on 1 October 2014.

8. At this point, the Chamber wished to stress that it has remained undisputed that the player duly received from Club C all amounts due under the contract, except for (parts of) the monthly salaries for June and July 2016, as well as that at the beginning of August 2016, the player signed the transfer agreement in relation to his transfer from Club C to Club F.
9. Having said that, the Chamber recalled the contents of the clause contained in article 9 of the transfer agreement, which holds the following wording: *'The player signs this agreement for acceptance and states not to have anything to claim from Club C with reference to the employment agreement filed at League of Country D'*.
10. In addition, the Chamber referred to the contents of art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.
11. Bearing in mind the aforementioned article, the DRC first of all took note of the of the player's arguments, as per which he claims not to have waived his right to receive any outstanding remuneration from Club C. In particular, the Chamber noted that the player claims that the contents of the transfer agreement cannot be upheld against him, as his signature on the transfer agreement does not change the scope, object and purpose of said transfer agreement.
12. In addition, the Chamber recalled the player's arguments, that the only reason the parties concluded the transfer agreement, was to effectuate the transfer of the player from Club C to Club F and that is was never the object and intention of the transfer agreement to conclude that the player would waive his right to receive due remuneration. Further, the DRC noted that according to the player, Club C never raised the issue about the possible waiving of salaries and simply requested him to sign the transfer agreement.
13. In this respect, the Chamber first of all pointed out that a party signing a document of legal importance without knowledge of its precise contents, as a general rule, does so on its own responsibility, and must bear any consequences eventually arising from it. What is more, the DRC noted that argument of the Club C that the document in question was signed by the player and that the player was aware of the contents of the transfer agreement, since the negotiations already started in the beginning of July 2016, remained uncontested by the player, as he

only pointed out that it was not the intention of the parties to agree upon waiving of (financial) rights and confirmed to have been aware about the interest of Club F in his services.

14. In this respect, the members of the Chamber were not convinced of the player's argument that he was not well informed of the consequences of signing the transfer agreement, as he also bore an own responsibility to verify the content of the transfer agreement.
15. What is more, the members of the Chamber further pointed out that the player indicated that if Club C would have wanted to settle its debts with the player, it should have concluded a separate agreement with him. With respect to the player's argument, the Chamber concurred that the player would also have had the option to either not sign the transfer agreement or have the allegedly outstanding payments explicitly excluded from the legal effects of the transfer agreement, in case he was not in agreement with such provision.
16. In conclusion, the members of the Chamber established that it is not disputed that the player indeed signed the transfer agreement containing a waiver in its article 9 and that it was under his responsibility to verify the content and the possible legal consequences of signing such document.
17. In addition to the foregoing considerations and reiterating the principle of burden of proof established in art. 12 par. 3 of the Procedural Rules, the Chamber concluded that the player had not presented any further documentary evidence or any consistent legal argument, corroborating his statement that the transfer agreement could not be upheld against him.
18. Consequently, the members of the Chamber decided to dismiss the player's arguments and concluded that the consequences of signing the transfer agreement and consequently accepting the contents of any clauses inserted in said agreement, could be applied against the player.
19. What is more, the members of the Chamber agreed that the aforementioned clause, which was inserted in the last page of the transfer agreement, which page was signed by Club C, Club F and the player, unambiguously stipulates that the player has no further claims towards Club C under the pertinent employment contract signed between them. In this respect, the members of the Chamber pointed out that the wording of said clause is clear and unambiguous, as it refers to the employment contract filed at the national league of Country D. As a result, the Chamber established that the player, by signing the transfer agreement waived his rights to receive any amounts under the employment contract with Club C, which may have remained outstanding.

20. On account of the all the above-mentioned circumstances as well as the contents of the clause in article 9 of the transfer agreement, the Chamber could not uphold the player's arguments. As a result thereof, the Chamber established that the player, by signing the transfer agreement dated 1 August 2016, waived his right to receive his salaries that were not yet paid by Club C, i.e. the salaries for the months of June and July 2016.
21. On account of the above, the Chamber decided to reject the claim of the player in its entirety.

III. Decision of the Dispute Resolution Chamber

The claim of the Claimant, Player A, is rejected.

Note relating to the motivated decision (legal remedy):

According to article 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:

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For the Dispute Resolution Chamber:

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Encl. CAS directives