Decision of the
Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 29 September 2016,

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 27 May 2012, the player from country B, Player A (hereinafter: *the Claimant*), and the club from country D, Club C (hereinafter: *the Respondent*), signed an employment contract (hereinafter: *the contract*) valid as from the date of signature until 27 May 2015.

2. According to Appendix 1 of the contract, the Respondent undertook to pay the Claimant the following fixed monthly salary:
   - EUR 19,000 for the period from 27 May 2012 to 27 May 2013;
   - EUR 22,050 for the period from 27 May 2013 to 27 May 2014;
   - EUR 24,150 for the period from 27 May 2014 to 27 May 2015.

3. On 28 February 2014, the Claimant and the Respondent signed an "*Additional Agreement to Contract from 27 May 2012*" (hereinafter: *the termination agreement*), by means of which they terminated the contract as from 28 February 2014.

4. According to art. 4 of the termination agreement, the Respondent committed to pay the amounts of EUR 49,000 and of 177,625 to the Claimant, as follows:
   - EUR 11,000 on 10 March 2014;
   - EUR 22,000 on 15 April 2014;
   - EUR 16,000 and 100,000 on 15 May 2014;
   - 77,625 on 15 June 2014.

5. Moreover, according to the same art. 4, the Respondent undertook to pay the aforementioned amounts in the bank account indicated by the Claimant in the termination agreement.

6. By means of a letter dated 29 September 2014, the Respondent asked the Claimant to be provided "*with the opportunity to repay the outstanding debt owed to you in full until the 30 October 2014*". In such letter, the Respondent also committed to pay a penalty "*in the amount of 10% of the existing debt for each month of the delay in the payment*" in case the payment was not performed within 30 October 2014.

7. On 6 February 2015, the Respondent informed the Claimant that it paid the amount of 304,895 on 30 December 2014 and stated to have fulfilled its obligations through such payment. In particular, the Respondent pointed out that the payment was made in currency and to a bank account different from that set out in the agreement because of alleged "*changes and restrictions in the currency legislation of country D*".

8. On 9 July 2015, the Claimant addressed a letter to the Respondent by means of which he contested that the Respondent had fulfilled its obligations as it allegedly failed to perform the transfer of the due amount to the bank

account set out in art. 4 of the termination agreement. Moreover, through the same letter, the Claimant put the Respondent in default for the amount of "*304,895 or the equivalent in Euro 15,855.17*", granting the Respondent ten days for the payment.

9. On 20 July 2015, the Respondent replied to the Claimant indicating that it fulfilled its obligations as it "*transferred on 30 December 2014 to his account in the bank of country D the remaining amount of debt in the currency of country D*". Moreover, the Respondent reiterated that the payment was performed in such way because of alleged restrictions imposed by the Government and the bank of country D on the transfer of currency to foreign accounts.

10. On 31 July 2015, the Claimant lodged a claim against the Respondent before FIFA for breach of the termination agreement, requesting the payment of the following amounts:
    a) EUR 15,855 "*or the equivalent*" 304,895 as the outstanding amount as per the termination agreement;
    b) the payment of "*the debt penalty for each month of the delay, from 30 October 2014 until the fulfilment of the obligation*".

11. In his claim, the Claimant pointed out that the Respondent had to perform the payments at the bank account set out in the termination agreement and, as this did not occur, the Respondent did not fulfil its obligations. In this regard, the Claimant acknowledged a payment of EUR 41,047 from the Respondent in the bank account indicated in the termination agreement, but highlighted that the Respondent failed to pay the amount of 304,895 in the same bank account, in this way failing the Respondent to comply with its obligations.

12. In its reply, the Respondent stated that the payment of the claimed amount was made on 30 December 2014. Moreover the Respondent emphasized that, at the Claimant's request, it provided him, on 31 March 2015, with a bank certificate about "*the admission of the abovementioned amount to his account*".

13. Furthermore, the Respondent considered that its obligations were fulfilled "*in a manner not inconsistent with the interests of the both parties, furthermore the only possible in these circumstances*".

14. The Respondent also added that no penalty was due to the Claimant as the "*parties have not agreed this penalty payment contractually*". Furthermore, the Respondent considered that, should the penalty be applied, the same is not reasonable or proportionate and it should be calculated on the period as of 30 October until 30 December 2014 only.

15. In his replica, the Claimant repeated that the claimed amount was not received by the Claimant at the bank account set out in the termination agreement, emphasizing that all the previous payments were made by the Respondent to such bank account.

16. As to the claimed penalty, the Claimant alleged that "*is a right that derives from the nature of law itself*", being entitled to such penalty due to the unfulfillment of the Respondent's contractual obligations.

17. In its duplica, the Respondent recalled its previous arguments and stressed that the Claimant did not deny that the disputed amount had been transferred "*to the Player's account in bank of country D on 30 December 2014*", as per bank certificate provided on file. Moreover, the Respondent reiterated that there was no legal basis for the application of any penalty and, in case the DRC would award it, this should be applied only until 30 December 2014.

II. Considerations of the DRC judge

1. First of all, the DRC judge analysed whether he was competent to deal with the matter at hand. In this respect, he took note that the present matter was submitted to FIFA on 31 July 2015. 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 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 conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2016) he is competent to decide on the present matter, which concerns an employment-related dispute with an international dimension between a player from country B and a club from country D.

3. In particular, and in accordance with art. 24 par. 2 lit. i) of the Regulations on the Status and Transfer of Players, the DRC judge confirmed that he may adjudicate in the present dispute, the value of which does not exceed CHF 100,000.

4. In continuation, the DRC judge analyzed 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 (edition 2016), and considering that the present claim was lodged on 31 July 2015, the 2015 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

5. 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, he 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 he considered pertinent for the assessment of the matter at hand.

6. First, the DRC judge noted that the parties entered into an employment contract valid as from 27 May 2012 until 27 May 2015, which the parties terminated on 28 February 2014 by signing a termination agreement, according to which the Claimant committed to complete the payment of the amounts of EUR 49,000 and of 177,625 within 15 June 2014.

7. In continuation, the DRC judge acknowledged that it was undisputed that the Respondent asked the Claimant to be provided with the opportunity to complete the due payment within 30 October 2014 and committed to pay a 10% penalty in case such payments were not performed within such date.

8. Furthermore, the DRC judge noted that it was also undisputed that the Respondent informed the Claimant of having completed the due payment by transferring the amount of 304,895 to the Claimant on 30 December 2014.

9. In addition, the DRC judge noted that the Claimant alleged that the Respondent did not comply with its obligations as he did not receive the payment of the amount of EUR 15,855, or the equivalent 304,895, at the bank account set out in the termination agreement. Furthermore, the DRC judge noted that the Claimant, in his claim, requested the payment of the debt penalty for each month of delay from 30 October 2014.

10. In continuation, the DRC judge took note that the Respondent argued that it paid the amount of 304,895 to a different bank account because of alleged changes in Ukrainian legislation, but such bank account was anyway belonging to the Respondent. In particular, the Respondent emphasized that the Claimant did neither deny that the bank account, to which the alleged payment of 304,895 was made, was belonging to the player nor that the payment of such amount was actually made to such account.

11. Having established the aforementioned, the DRC judge deemed that the underlying issue in the present dispute was to determine whether the Respondent fulfilled its contractual obligations towards the Claimant.

12. In this context, the DRC judge wished to emphasize that is was not disputed by the parties that the payment of 304,895 was performed to a bank account belonging to the Claimant on 30 December 2014.

13. On account of the above, the DRC judge considered that the Respondent fulfilled its obligation to provide the Claimant with payment of the due amount and, thus, in accordance with the general legal principle of *pacta sunt servanda*. Indeed, in case it would be determined that the Respondent needs to make the relevant payment again, it would entail that the Respondent receives the same amount twice.

14. In continuation, having established that the Respondent paid the claimed amount to the Claimant, the DRC judge analysed whether a penalty was applicable due to the fact that the Respondent performed the payment after the agreed date.

15. In this context, the DRC judge deemed it appropriate to remind the parties that the payment of a penalty in case of non-compliance must be expressly agreed by both parties.

16. With this in mind, the DRC judge pointed out that, in the case at stake, the parties did not expressly agree, in the termination agreement, on a specific penalty in case of non-compliance. In particular, the DRC judge was eager to emphasize that the offer of the Respondent to amend the terms of the termination agreement with a penalty in case of delayed payment was not followed by the Claimant's acceptance.

17. In view of the above, the DRC judge considered that no penalty was agreed by the parties and, thus, decided that no penalty was due to the Claimant.

18. As a consequence thereof, the DRC judge concluded his deliberations by rejecting the claim of the Claimant.

III. Decision of the DRC judge

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

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Note relating to the motivated decision (legal remedy):

According to article 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:

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