

## **Decision of the Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 25 October 2012,

in the following composition:

**Geoff Thompson** (England), Chairman  
**Joaquim Evangelista** (Portugal), member  
**David Mayebi** (Cameroon), member  
**Damir Vrbanovic** (Croatia), member  
**Guillermo Saltos Guale** (Ecuador), member

on the claim presented by the player,

**Player H**, from country B

*as Claimant*

against the club,

**Club T**, from country A

*as Respondent*

regarding an employment-related dispute between the parties

## I. Facts of the case

1. On 1 July 2011, Player H, from country B (hereinafter: *Claimant or player*), and Club T, from country A (hereinafter: *Respondent or club*), entered into an employment contract (hereinafter: *the contract*) valid from the date of signature until 30 June 2013.
2. According to the contract, the club agreed to pay/provide to the player the following remuneration:
  - During the 2011-2012 season, an annual salary of USD 42,000 to be paid as follows:
    - USD 6,000 payable no later than seven days after registration of the player with The Football Association of country A; and
    - USD 36,000 payable in 12 instalments of USD 3,000 to be "*received by the player not later than the last day of every month with effect from July 2011 and end in June 2012*";
  - During the 2012-2013 season, an annual salary of USD 46,000 to be paid as follows:
    - USD 10,000 payable no later than 1 July 2012; and
    - USD 36,000 payable in 12 instalments of USD 3,000 to be "*received by the player not later than the last day of every month with effect from July 2012 and end in June 2013*";
  - USD 7,000 if the club were to win the national championship, to be paid no later than 30 days after the last league game of that season;
  - USD 4,000 if the club were to win the Cup of country A, to be paid no later than 30 days after the last league game of that season;
  - USD 3,000 in the event of the club passing the qualifying rounds and reaching the play-offs of the UEFA Europa League, to be paid no later than 30 days after it qualifies for the play-offs;
  - USD 200 for every league or cup victory;
  - A bonus of USD 200 for each goal scored by the player in any league or cup match;. (According to the contract, this bonus would accumulate and the club would pay the accumulated amount to the player not later than the last day of every month.)
  - Accommodation for use by the player;
  - Car for use by the player;
  - One return ticket per season to country A for the player and for a family member;
  - Bonuses to be attributed according to the club's internal regulations.
3. According to clause V.5 of the contract, "*If the payment of the Player's remuneration hereunder is late 30 days or more for any reason, then this shall be treated as a unilateral breach of contract without just cause as specified under the FIFA Regulations and the player shall have the right to receive compensation from the club and to terminate this Agreement and to be employed by any football club with immediate effect (...)*".

4. By letter dated 12 December 2011, the player informed the club that the amount of USD 19,500 was outstanding and requested the immediate payment of such amount.
5. By letter dated 31 December 2011, the player terminated the contract due to unilateral breach by the club without just cause. In his letter, the player states that the club had failed to pay the agreed advanced fees and that, on that date, six monthly salaries were outstanding, as well as other agreed payments.
6. On 3 January 2012, the player filed a claim with FIFA against the club for breach of contract during the protected period.
7. In light of the above, the player requested the payment of an aggregate amount of USD 121,079 plus interest, as follows:
  - Outstanding remuneration
    - USD 595 as advance salary payment;
    - USD 18,000 as monthly salaries for July, August, September, October, November and December 2011;
    - USD 3,800 as bonuses for victories and goals scored.
  - Compensation
    - USD 18,000 comprising six monthly salary payments between January and June 2012;
    - USD 46,000 comprising the advance salary payment and 12 monthly salary payments for the season, from July 2012 to June 2013;
    - USD 3,800 for projected win and goal bonuses for the second half of the 2011-2012 season;
    - USD 7,600 for projected win and goal bonuses for the full 2012-2013 season;
    - USD 6,984 as value for the accommodation for the remaining 18 months of the contract;
    - USD 500 for the use of the car between August and December 2011;
    - USD 1,800 for the use of the car for the remaining 18 months of the contract;
    - USD 7,000 in the event that the club were to win the league championship in 2011-2012 and/or 2012-2013;
    - USD 4,000 in the event that the club were to win the Cup of country A in 2011-2012 and/or 2012-2013;
    - USD 3,000 in the event that the club were to successfully advance to the preliminary qualifying stage of the UEFA Europa League and reach the play-offs in 2012-2013.
8. According to the player, at 31 December 2011, the club had already failed to make payments of an aggregate overdue amount of USD 22,395 out of a total amount of USD 27,800 which had to be paid until that date. In particular, the player explained that he was entitled to receive USD 6,000 as advance payment, but acknowledged having received only the total amount of USD 5,405 for that period. The player also asserted

that a number of additional benefits had also not been provided as agreed, such as a car for use by the player and proper accommodation.

9. The player asserted that he notified the club on several occasions about the outstanding payments and that written warnings had been sent on 6 August 2011, 29 August 2011, 4 September 2011 and 12 December 2011, before terminating the contract.
10. In addition, the player held that the club purchased a two-way ticket, in accordance with the contract, for him to visit his family in country B. However, the club allegedly cancelled the return flight, as informed by the travel agency via e-mail. With regard to the return flight to country A, the player maintained that *"[i]t appears as though there was malicious intent in the Respondent's actions, given the fact that the Respondent was aware that the Claimant would be left trapped in another country without the financial means to fly back to country A"*.
11. Finally, the player stated that, according to clause 5 of the contract and FIFA's jurisprudence, the fact that more than six salaries were outstanding must allow for a unilateral termination of the contract with just cause.
12. On 25 February 2012, the club filed an answer to the player's claim, and thereby stated that, at the end of December 2011, the player allegedly asked permission to go home for vacations. The club further asserted that the permission was granted with the mutual agreement that the player was to return at the beginning of January 2012.
13. The club maintained that, contrary to the agreed, the player did not show up at the club premises at the beginning of January 2012. The club also asserted that *"no contract was cancelled unilaterally by our part toward Player H"* and that *"Player H will be our player up to 30.06.2013, as stated in the contract, and his salaries are already in the club till box available upon his arrival"*.
14. Moreover, the club held that there were outstanding salaries for three months only. The club did not submit any documents in this regard.
15. On 19 April 2012, the player presented his replica to the club's position. To the allegation that the club was expecting him to report to training at the beginning of January 2012, the player pointed out that several reminders had been sent, to no effect, to the club about unpaid contractual amounts before leaving the country in December 2011 and that, as such, he did not have any option other than to terminate the contract. For these reasons, the player stated that the club could not expect the player to join the club in January 2012.

16. Moreover, the player emphasised that, unlike the club's statement in its response, at the time of the termination of the contract, there were not three salaries outstanding, but rather six, and that, since then, no payments had been made.
17. Finally, the player claimed to have received an e-mail from the club on 2 April 2012 stating that "*[I]n country A Association Football arrived a letter from FA, where Club F requested your release letter. We are ready to give you the permit passage. But, please send us a request letter you write that "Club T has no financial or material obligation to you. I want to break the contract, with agreement of both parties."* This, according to the player, would suggest that the Respondent had no desire to continue the contractual relationship with the Claimant and was only wanted to avoid paying outstanding debts and compensation for the breach of contract.
18. On 4 May 2012, the club presented its duplica and stated that the club has shown that it wanted to fulfil the contract and will allegedly pay all the overdue amounts and travel expenses as soon as the player arrive in country A.
19. Invited to present his position to the apparent amicable settlement proposal made by the club, the player responded on 9 May 2012 and stated that "*The Respondent's actions have led to the labour relationship being seriously disrupted and the Claimant has absolutely no confidence that the Respondent will remedy the breach of contract or that the Respondent will perform its contractual obligations in the future*".

## **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 3 January 2012, thus after 1 July 2008. 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. article 21 par. 2 and 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 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players, 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 from country B and a club from country A.

3. Furthermore, the DRC 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 (edition 2010) and also considering that the present claim was lodged in front of FIFA on 3 January 2012, the edition 2010 of the Regulations on the Status and Transfer of Players (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 Dispute Resolution Chamber entered into the substance of the matter. The members of the Chamber started by acknowledging the facts of the case, as well as the documentation contained in the file.
5. In this respect, the Chamber recalled that the parties had signed an employment contract valid from 1 July 2011 to 30 June 2013, in accordance with which the Claimant was entitled, *inter alia*, to an annual salary of USD 42,000 for the 2011-2012 season and an annual salary of USD 46,000 for the 2012-2013 season.
6. At this moment, the DRC acknowledged that the Claimant filed a claim with FIFA against the club for breach of contract during the protected period and requested the payment of an aggregate amount of USD 121,079 plus interest.
7. In this context, the Chamber, first and foremost, focused its attention on the question as to when the termination of the contract had taken place and who had promoted such termination.
8. The Chamber acknowledged the Claimant's statement that it had terminated the contract on 31 December 2011, by means of a letter addressed to the Respondent and took due note of the contents of the copy of such letter provided by the Claimant in the context of these proceedings.
9. On the other hand, the Chamber also took note that in its response to the player's claim, the Respondent had maintained that, notwithstanding the termination of the contract by the Claimant, the latter was still a player of the club until 30 June 2013.
10. In this regard, the Chamber emphasized, first of all, that the Respondent did not contest having received the letter whereby the Claimant terminated the contract.
11. In addition, the Chamber also wished to note that, by definition, a unilateral termination of a contract does not require the counterparty's acceptance.
12. In light of the above, the Chamber decided that the contract had been, in fact, unilaterally terminated by the Claimant on 31 December 2011.

13. On account of the above, the members of the Chamber proceeded to analyze whether the Claimant had just cause to unilaterally terminate the contract.
14. In this respect, the Chamber acknowledged that, by letter dated 12 December 2011, the Claimant sent a default notice to the Respondent requesting the payment of an allegedly outstanding amount of USD 19,500.
15. The DRC also took due note that Claimant's allegation that, upon the termination of the contract on 31 December 2011 and among other alleged breaches of contract, the Respondent had failed to pay six salaries, notably the salaries for July, August, September, October, November and December 2011.
16. In continuation, the members of the Chamber carefully analyzed the Respondent's position in these proceedings and came to the conclusion that the latter never contested having failed to make contractually agreed payments to the Claimant. The Chamber emphasized that, in fact, the Respondent had specifically stated in his duplica that it was prepared to pay all overdue financial obligations towards the Claimant. (cf. point I. 18 above)
17. In this regard, the Chamber took due note that, on a first instance, the Respondent did dispute owing at least six salaries to the Claimant, claiming that only three were outstanding at the time of the termination of the contract. At this point, the DRC recalled that according to the legal principle of the burden of proof, any party claiming a right on the basis of an alleged fact shall carry the burden of proof (cf. art. 12 par. 3 of the Procedural Rules). In particular, the members of the Chamber also pointed out that, according to the burden of proof rule, it was upon the Respondent to prove that only three salaries were outstanding and not six and that the latter did not present any evidence to that end.
18. In continuation, the Chamber emphasized, once again, that the central issue which must be decided is whether the Claimant did have just cause or not to terminate the contract on 31 December 2011.
19. At this juncture, the members of the Chamber wished to emphasize that, according to its long stand jurisprudence, confirmed by the Court of Arbitration for Sport, the non-payment or late payment of remuneration by an employer does in principle – and particularly if repeated as in the present case – constitute "*just cause*" for termination of the contract, for the employer's payment obligation is his main obligation towards the employee. The Chamber wished to underline in this respect that, once the employer repeatedly fails with this obligation, the employee can no longer be expected to continue in the employment relationship.

20. Considering all the above, the Chamber considered that, among other payments, six salaries were already outstanding at the moment of termination, which constitutes clear evidence that the Claimant did have just cause to unilaterally terminate the contract.
21. Additionally, the Chamber highlighted that the Claimant did request the payment of the outstanding amounts via letter, on 12 December 2011, warning the Respondent and giving the opportunity for the Respondent to comply with its obligations, before terminating the contract unilaterally.
22. Having established that the Claimant had just cause to terminate the contract, the Chamber focused its attention on the consequences of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive from the Respondent an amount of money as compensation for breach of contract in addition to any outstanding payments on the basis of the relevant contract.
23. As a consequence, the Chamber decided that the Respondent is liable to cancel all outstanding amounts under the contract until the date on which the employment relationship was terminated. In this respect, the Chamber pointed out that, besides six outstanding salaries for an aggregate amount of USD 18,000, the Claimant had also requested the payment of USD 595 as the remaining outstanding part of the advance payment which was supposed to have been paid upon his registration with The Football Association of country A, as well as USD 3,800 for bonuses for match victories and goals scored.
24. In this regard, the members of the Chamber made reference again to the burden of the proof (cf. art. 12 par. 3 of the Procedural Rules) and underlined that the aforementioned payments were specifically provided for in the contract and that the Respondent never contested that they were due. Therefore, the DRC concluded that the Claimant was entitled to receive such bonuses as well as that the Respondent failed to pay the amounts contractually agreed, having paid only the amount of USD 5,405 on the date of the termination of the contract, *i.e.* 31 December 2011.
25. The Chamber decided, therefore, that the Claimant is entitled to receive from the Respondent outstanding remuneration in the amount of USD 22,395.
26. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber, the Chamber decided that the Respondent must pay to the Claimant interest of 5% p.a. on the outstanding remuneration as of the of 3 January 2012 until the date of effective payment.

27. In continuation, the Chamber established that, in accordance with art. 17 par. 1 of the Regulations, the Respondent is also liable to pay compensation for damages suffered by the Claimant as a consequence of the early termination of the contract due to the breach committed by Respondent.
28. In continuation, the Chamber focused its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of the Chamber firstly reminded 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.
29. In application of the relevant provision, the Chamber held that it first of all 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.
30. The Chamber also noted that the Claimant had requested the payment of compensation for breach of contract in the amount of USD 98,684, corresponding to the aggregate amount of salaries to which he would be entitled under the contract until its expiry date, plus other bonuses and benefits. (cf. point I. 7 above)
31. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract until 30 June 2013 and concluded that the Claimant would have received USD 64,000 as salaries had the contract been executed until its expiry date.
32. Moreover, the Chamber also concluded that, had the contract not been terminated, the Claimant would also have received a bonus of USD 4,000, since that, according to the contract, he was entitled to such amount in case the Respondent were to win the Cup of country A, which ended up being the case during the season 2011-2012.
33. In continuation, the Chamber assessed 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.

34. In this respect, the Chamber noted that, on 20 March 2012, the Claimant apparently signed a new employment contract with the Club F, from country E where he was to be entitled to a monthly salary of currency of country E 700. The DRC took note, however, of the Claimant's allegation that, because an international transfer certificate had not been delivered by The Football Association of country A, he had not been paid any monies by the country E club. In this respect, the members of the Chamber considered important to remind that, according to the Regulations and the jurisprudence of this Chamber, the validity of an employment contract cannot be made conditional upon the execution of (administrative) formalities, such as, but not limited to, the registration procedure in connection with the international transfer of a player.
35. Consequently, on account of all of the above-mentioned considerations, the remaining period of the contract and the specificities of the case at hand, the Chamber decided that an amount of USD 45,000 as compensation would be adequate in the case at hand. The Chamber also decided to award the Claimant interest at the rate of 5% *p.a.* over the amount of compensation, as of the date of the decision.
36. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claims lodged by the Claimant are rejected.

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### III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player H, is partially accepted.
2. The Respondent, Club T, has to pay to the Claimant, **within 30 days** as of the date of notification of this decision, outstanding remuneration in the amount of USD 22,395, plus 5% interest *p.a.* over said amount as of 3 January 2012 until the date of effective payment.
3. The Respondent also has to pay to the Claimant, **within 30 days** as of the date of notification of this decision, compensation for breach of contract in the amount of USD 45,000, plus 5% interest *p.a.* over said amount as of 25 October 2012 until the date of effective payment.

4. In the event that the aforementioned amounts, plus interest, are 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.
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.

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**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 Dispute Resolution Chamber:

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Jérôme Valcke  
Secretary General

Encl. CAS directives