

**Decision of the  
Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 26 April 2012,

in the following composition:

**Geoff Thompson** (England), Chairman

**Carlos Soto** (Chile), member

**Brendan Schwab** (Australia), member

**Todd Durbin** (USA), member

**Damir Vrbanovic** (Croatia), member

on the claim presented by the player M,

*as Claimant*

against the club O,

*as Respondent*

regarding an employment-related dispute arisen between the parties

## **I. Facts of the case**

1. In May 2007, the player M from country P, (hereinafter referred to as *player* or *Claimant*), and the club O from country N, (hereinafter referred to as *club* or *Respondent*), signed an employment contract valid as from 1 June 2007 until 31 May 2008 as well as an annex to said employment contract.
2. Art. 13 of the employment contract stipulates that *"This agreement shall be governed by and construed in accordance with the internal regulations of the Club and the regulations of the Football Association of N. In case of any financial dispute between the player and the Club such dispute will be brought exclusively to the attention of the board of the Football Association of N for the purpose of finding a settlement."*
3. On 3 April 2008, the parties signed an agreement in accordance with which they mutually terminated the employment contract (hereinafter referred to as *termination agreement*).
4. According to the termination agreement, the player was to receive from the club the amount of EUR 28,000 in four equal monthly instalments of EUR 7,000 falling due on 15 April, 15 May, 15 June and 15 July 2008.
5. On 15 September 2009, the player lodged a claim against the club in front of FIFA maintaining that the club still owed him the total amount of EUR 28,000. Consequently, the player asked to be awarded payment of the amount of EUR 28,000 as well as damages, costs incurred, and he requested that sanctions be imposed on the club.
6. In reply to the claim, the club first and foremost contested the competence of FIFA to deal with the present matter invoking art. 13 of the employment contract. In addition, according to the club, the Football Association of N (NFA) has an independent deciding body to deal with the matter, *i.e.* the Dispute Resolution Chamber of the NFA.
7. As regards the substance of the matter, the club denied all allegations put forward by the player and asserted that the player received the full amount of EUR 28,000 in accordance with the termination agreement.
8. The player, for his part, insisted that FIFA has jurisdiction to deal with the present matter.

9. He furthermore pointed out that the club had not presented any documentation in support of its allegations.
10. Subsequently, the club presented a copy of a receipt dated 5 August 2008 bearing two signatures, in accordance with which the player allegedly acknowledged receipt of the amount of EUR 28,000 from the club.
11. In reaction, the player denied having received payment of the amount of EUR 28,000 and refuted having signed such receipt, while underlining that he was in country Z on 5 August 2008 with his new club. Therefore, according to the player, it was impossible to receive any money and sign any receipt on that day.
12. When asked by FIFA to present the original of the disputed receipt, the club asserted that it was only in possession of a copy of it and that it was issued by the previous board of the club and given against cash payment. The club, in addition, asked for an extension of the time limit in order submit any supportive documents while emphasizing that the receipt was sent to the club by fax.
13. FIFA did not receive any further documents from the club.
14. At FIFA's request to be provided with a copy of the relevant Regulations of its national deciding body, the NFA presented documents referred to as "Regulations for the registration and transfer of football players Football Association of N (2005)" (in force since 15 June 2005) relating *inter alia* to the deciding body under the Football Association of N, in accordance with which the NFA "Dispute Resolution Chamber" consists of five members (chairman, vice-chairman, three members). The chairman, vice-chairman and one member are elected by the Executive Committee of the NFA and two members are elected by the A Football Players' Association. Furthermore, according to said Regulations, the appeal body is the "Disciplinary Authority of the Football Association of N".

## **II. Considerations of the Dispute Resolution Chamber**

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *DRC* or *Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber referred to art. 21 par. 1 and 2 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *Procedural Rules*). The present matter was submitted to FIFA on 15 September 2009, thus after 1 July 2008. Consequently, the Chamber concluded that the 2008 edition of the Procedural Rules is applicable to the matter at hand.

2. With regard to the competence of the Dispute Resolution Chamber, art. 3 par. 1 of the Procedural Rules states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of art. 22 to 24 of the Regulations on the Status and Transfer of Players (edition 2010). In accordance with art. 24 par. 1 in combination with art. 22 lit. b) of the aforementioned Regulations, the Dispute Resolution Chamber would, in principle, be competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from P and a club from N.
3. However, the Chamber acknowledged that the Respondent contested the competence of FIFA's deciding bodies on the basis of art. 13 of the employment contract highlighting that the N Football Association (NFA) has an independent deciding body to deal with the matter, *i.e.* the Dispute Resolution Chamber of the NFA.
4. In this regard, the Chamber noted that the Claimant rejected such position and insisted that FIFA has jurisdiction to deal with the present matter.
5. Taking into account the above, the Chamber emphasised that in accordance with art. 22 lit. b) of the 2010 edition of the Regulations on the Status and Transfer of Players it is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the Association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the Chamber referred to FIFA Circular no. 1010 dated 20 December 2005. In this regard, the Chamber further referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.
6. While analysing whether it was competent to hear the present matter, first and foremost, the Chamber deemed it of utmost importance to highlight that the present dispute pertains to the execution of the termination agreement and that the latter agreement does not contain any arbitration or jurisdiction clause.
7. Having said this, for the sake of completeness, the members of the Chamber turned to art. 13 of the employment contract, on the basis of which the Respondent contested FIFA's jurisdiction. According to said art. 13, a financial dispute between the parties would be brought to the exclusive attention of "*the board of the N Football Association for the purpose of finding a settlement*". Hence, art. 13 of the employment contract clearly does not refer to a national

dispute resolution chamber or any similar arbitration body in the sense of art. 22 lit. b) of the aforementioned Regulations. What is more, the Chamber stressed that the employment contract, or the termination agreement, for that matter, does not make explicit reference to any collective agreement or regulations that would provide for an arbitration clause.

8. In continuation, the members of the Chamber wished to stress that, even if the contracts at the basis of the present dispute would have included such arbitration clause in favour of national dispute resolution, the Respondent was unable to prove that, in fact, the NFA "Dispute Resolution Chamber" meets the minimum procedural standards for independent arbitration tribunals as laid down in art. 22 lit. b) of the Regulations on the Status and Transfer of Players, in FIFA Circular no. 1010 as well as in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations.
9. In this respect, the DRC referred to the principle of equal representation of players and clubs and underlined that this principle was one of the very fundamental elements to be fulfilled, in order for a national dispute resolution chamber to be recognised as such. Indeed, this prerequisite is mentioned in the Regulations on the Status and Transfer of Players, in the Circular no. 1010 as well as in art. 3 par. 1 of the NDRC Regulations, which illustrates the aforementioned principle as follows: *"The NDRC shall be composed of the following members, who shall serve a four-year renewable mandate: a) a chairman and a deputy chairman chosen by consensus by the player and club representatives (...); b) between three and ten player representatives who are elected or appointed either on proposal of the players' associations affiliated to FIFPro, or, where no such associations exist, on the basis of a selection process agreed by FIFA and FIFPro; c) between three and ten club representatives (...)."* In this respect, the FIFA Circular no. 1010 states the following: *"The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal (...). Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list."*
10. The members of the Chamber concurred that the "Regulations for the registration and transfer of football players N Football Association (2005)", in accordance with which, *inter alia*, the chairman, vice-chairman and one member are elected by the Executive Committee of the NFA and two members are elected by the Football Players' Association of A, do not meet the aforementioned principles.

11. In view of all the above, the Chamber established that the Respondent's objection to the competence of FIFA to deal with the present matter has to be rejected and that the Dispute Resolution Chamber is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.
12. Subsequently, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2010 and 2009) and, on the other hand, to the fact that the present claim was lodged on 15 September 2009. The Dispute Resolution Chamber concluded that the 2008 version of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.
13. 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 recalled that the Claimant and the Respondent, on 3 April 2008, signed an agreement in accordance with which they terminated the employment contract that they signed in May 2007 by mutual agreement. According to the termination agreement, the Claimant was to receive EUR 28,000 from the Respondent in four instalments of EUR 7,000 between 15 April 2008 until 15 July 2008.
14. The members of the Chamber then turned to the claim of the Claimant, who maintained that the Respondent failed to pay the aforementioned amount of EUR 28,000. Consequently, the Claimant asked that the Respondent be instructed to pay the amount of EUR 28,000 as well as damages and an amount of money to cover costs that he incurred. In addition, he requested that sanctions be imposed on the Respondent.
15. Subsequently, the Chamber noted that the Respondent, in its defence, maintained that it fully paid the amount of EUR 28,000 to the Claimant. The members of the Chamber took into account that, in support of such position, the Respondent submitted a copy of a signed receipt.
16. In respect of the receipt submitted by the Respondent in connection with the aforementioned amount of EUR 28,000, the Chamber noted that the Claimant denies having received such payment and having signed such receipt.
17. The Chamber further noted that in spite of FIFA's request to submit the original of the disputed receipt, which, under circumstances as in the matter at hand is

standard procedure during the investigation into a dispute, the Respondent had failed to do so. In this context, the members of the Chamber also referred to 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. Therefore, the Chamber established that the Respondent failed to prove that such receipt was effectively signed by the Claimant and, thus, that the amount of EUR 28,000 was paid to the latter. Consequently, the Chamber had to reject the Respondent's position.

18. Hence, the Chamber decided that, in virtue of the principle *pacta sunt servanda*, the Respondent is liable to pay the amount of EUR 28,000 to the Claimant, which is due to the latter on the basis of the termination agreement concluded between the parties.
19. Moreover, the Chamber held that it had to reject the Claimant's petition relating to sanctions, in the light of the fact that the present matter does not involve the termination of an employment contract without just cause in the sense of art. 17 of the Regulations, but rather is about the non-fulfilment of an agreement by means of which the employment contract was mutually rescinded.
20. Furthermore, as regards the Claimant's claim pertaining to damages, which was not at all specified by the Claimant, the Chamber agreed that such claim is to be rejected due to a lack of legal basis.
21. Finally, the Dispute Resolution Chamber decided to reject the Claimant's claim pertaining to costs incurred in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber's respective longstanding jurisprudence in this regard.
22. In conclusion, the Dispute Resolution Chamber decided that the Respondent has to pay the amount of EUR 28,000 to the Claimant.
23. The Chamber concluded its deliberations in the present matter by establishing that any further request filed by the Claimant is rejected.

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

1. The claim of the Claimant M, is admissible.
2. The claim of the Claimant is partially accepted.
3. The Respondent, club O, has to pay to the Claimant the amount of EUR 28,000 within 30 days as from the date of notification of this decision.
4. In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, interest at the rate of 5% *p.a.* will fall due as of expiry of the aforementioned time limit and 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. 63 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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