

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 4 April 2007,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Mario Gallavotti (Italy), Member

Ivan Gazidis (USA), Member

Theo van Seggelen (Netherlands), Member

Carlos Soto (Chile), Member

on the claim presented by

the player, X, B,
represented by Mr Z, Attorney at Law

as Claimant

against

the club, Y, G,

as Respondent

regarding a contractual dispute arisen between the parties

I. Facts of the case

1. On 15 July 2005, the player X and the football club Y concluded an employment contract valid from the date of signature until 30 June 2007. According to the said contract, the player was entitled to receive, inter alia, a monthly salary of EUR 745 and the additional amount of EUR 120,000 which was to be paid according to the following schedule:

30 September 2005:	EUR 20,000
30 December 2005:	EUR 20,000
30 March 2006:	EUR 20,000
30 September 2006:	EUR 20,000
30 December 2006:	EUR 20,000
30 March 2007:	EUR 20,000

2. On 3 January 2007, the player X contacted FIFA via his legal representative and explained that he had not received the above-mentioned instalments due on 30 September 2006 and 30 December 2006, respectively. Furthermore, Y had allegedly not paid him premiums amounting to EUR 2,400, which he had been entitled to receive in accordance with the internal regulations of the club. Consequently, by means of his complaint, the player X claimed from Y the allegedly outstanding amount of EUR 42,400. The player furthermore declared that, in case the relevant sum was not paid until 5 January 2007, he requested to receive, as compensation for the non-respect of contractual obligations, the remaining value of the contract composed by the following amounts:

Monthly salaries January 2007 – June 2007:	EUR 4,470
Easter Bonus:	EUR 372.50
Holiday Allowance:	EUR 372.50
<u>Instalment due on 30 March 2007:</u>	<u>EUR 20,000</u>
Total:	EUR 25,215

3. Furthermore, the player demanded the termination of the labour agreement concluded with Y due to the alleged breach of contract on the part of the club.
4. On 5 January 2007, the player declared that, with immediate effect, he would not participate in any official activities of Y until FIFA issued a decision regarding the present case.

5. By letter dated 10 January 2007, Y explained that since September 2006, the player X had been negotiating with the president and CEO of Y, since the player had expressed his wish to transfer to another football club in January 2007. On 28 December 2006, the parties had allegedly come to an oral understanding, according to which the player had agreed to waive his right to the relevant instalments for September and December 2006, amounting to EUR 20,000 each, in case Y would allow the player to freely negotiate his transfer without the club claiming any compensation for the respective transfer.
6. Y furthermore declared that as soon as it had received the claim of the player on 5 January 2007, it had immediately proceeded to contact the player in order to settle the outstanding instalments. However, the player as well as his legal representative had apparently been unavailable during the entire day. In this respect, the club alleged that the player had set the short time limit of just two days on purpose in order to have a reason to claim the remaining value of the contract.
7. In order to safeguard its rights, Y claimed having prepared an "*Out-of-Court Complaint and Invitation*" dated 7 January 2007 which was to be presented to the player along with a cheque in the amount of EUR 42,400. In the said document, it was held that, should the player refuse to accept the cheque or be absent from home, the cheque would be deposited with the "*Deposit and Loans Fund*" on the same day, allegedly in compliance with a regular legal procedure in G which a debtor must follow in case the payee refuses to receive his/her dues or cannot be located. The player X was also asked to return to the club and to participate in its activities in accordance with the relevant employment contract. The said "*Out-of-Court Complaint and Invitation*" was served by a court bailiff to the player's wife on 9 January 2007, since the player X was not at home. However, the player's wife had refused to accept the cheque in the amount of EUR 42,400.
8. The club finally maintained that it had never been in default of its financial obligations towards its players and that the respective initial failure to pay the outstanding instalments was due to the oral agreement which had apparently been reached with the player. Consequently, Y requested the Dispute Resolution Chamber not to accept the unilateral termination of the employment contract and not to condemn the club to pay the amount of EUR 25,215 claimed by the player X.

9. On 10 January 2007, FIFA received a statement of the player, according to which he had never orally agreed to waive his right to the instalments for September and December 2006. Furthermore, the player had always been available in case the club had wished to contact him upon the filing of his claim. The player also deemed that, if the club had really intended to immediately pay the outstanding instalments, it would have been able to pay them directly to his bank account instead of presenting the cheque by a court bailiff; even more so in view of the fact that, since July 2005, the club had been paying all remuneration due to the player to his bank account.
10. On 17 January 2007, the player declared having received the amount of EUR 42,400 from the "*Deposit and Loans Fund*" on 15 January 2007. However, the player insisted on the breach of contract on the part of the club and the termination of the contract, inter alia, since the professional relationship between the parties had allegedly been irretrievably severed.
11. On 18 January 2007, the club Y contacted FIFA and declared that by collecting the amount of EUR 42,400, the player had in essence accepted the settlement of his dues by the club, which is why the case at hand was to be closed. Y also expressed its clear wish to keep the player in question. In this respect, the club explained that the instalments for September and December 2006 did not represent wages for rendered services, but scheduled instalments on the basis of a contract which expires in June 2007, i.e. prepaid money in consideration of the player's good performance during the entire contract period. Consequently, if the player should be released from his contractual obligations, he would have received money for services not rendered and, thereby, enriched himself unjustly. Finally, the Y presented two witness statements from the vice president of the club and a sports journalist, according to which the invoked oral agreement between Y and the player X regarding the player's alleged waiver had indeed been concluded.
12. By letter dated 26 January 2007, the club raised the question why X had only filed his claim in January 2007, although the instalment of September 2006 had already been due for four months. Y maintained that the player's claim had been lodged just before the registration period in order for the player to be released from his contractual obligations to negotiate his transfer to another club without the consent of Y. Furthermore, the club indicated that it continued to pay the rent of the player as well as to provide him with one of the club's vehicles, allegedly demonstrating that the player was still in the services of the club and

that the Dispute Resolution Chamber had no reason to ratify the termination of the relevant contract.

13. By correspondence dated 26 January 2007, the player X decidedly refuted the statement of the club, according to which the instalments of September and December 2006 were some sort of prepayment, invoking that there was no term or condition regarding the payment of those amounts. Consequently, according to the player, the statement of the club that he had become richer without just cause was inadmissible. The player also contested the witness statements provided by Y, since there had never been such an oral agreement as invoked by the club. The player concluded that, in any case, oral conversations could not constitute an amendment to a valid contract.
14. On 12 February 2007, FIFA was informed by the player X that, on 27 January 2007, he had moved from the apartment provided by Y and returned the club's car.
15. On 13 February 2007, Y informed FIFA, in response to the player's statement that the club could have paid the outstanding instalment directly to his bank account, that the payment policy of Y had never been to settle payments by making deposits to its players' bank accounts. Instead, all players received their due amounts by cheques and signed corresponding receipts. Respective receipts bearing the stamp of the club as well as the signature of the player X were presented to FIFA on 20 February 2007. Furthermore, Y raised the question as to why the player insisted in his action against the club, since the fact that the club had handed out the money to the player and that the player accepted it constituted a good and material cause for dismissing the player's application as inadmissible, as allegedly established in international and EU sports jurisprudence. By means of the same correspondence, the Y also informed FIFA that the player had abandoned his team and returned to B, without waiting for the relevant decision of the Dispute Resolution Chamber.
16. On 13 March 2007, the player X reiterated his previous position and added that the club had sometimes paid him by cheque and sometimes transferred his remuneration to his bank account. The player furthermore pointed out that the fact that Y had finally paid the outstanding amount of EUR 42,400 did not annul the breach of contract on the part of the club and the just cause for the termination of the contract. Finally, the player X declared having left G on 27 January 2007, inter alia since the club had asked him to vacate the apartment and give back the car which was at his disposition. Therefore, and since there was no

meaning in staying in G because he had terminated the contract for just cause, he had decided to return to his country with his family.

17. On account of all of the above, the player X requests the Dispute Resolution Chamber to validate the termination of the relevant contract for just cause and to condemn Y to pay to the player compensation for breach of contract amounting to EUR 25,215. The club Y requests the Dispute Resolution Chamber to drop the claim of the player X as inadmissible.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber had to analyse whether it was competent to deal with the matter at hand. In this respect, it referred to art. 18 paras. 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. The present matter was submitted to FIFA on 3 January 2007, as a consequence the Dispute Resolution Chamber concluded that the revised Rules Governing Procedures (edition 2005) on matters pending before the decision making bodies of FIFA are applicable on the matter at hand.
2. With regard to the competence of the Dispute Resolution Chamber, art. 3 par. 1 of the above-mentioned Rules states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of articles 22 to 24 of the current version of the Regulations for the Status and Transfer of Players (edition 2005). In accordance with art. 24 par. 1 in connection with art. 22 b) of the aforementioned Regulations, the Dispute Resolution Chamber shall adjudicate on employment-related disputes between a club and a player that have an international dimension.
3. Therefore, the Dispute Resolution Chamber concluded that is the competent body to decide on the present litigation involving a player from B and a club from G regarding a dispute in connection with the employment contract concluded between the said parties on 15 July 2005.
4. Subsequently, the Dispute Resolution Chamber analyzed which edition of the Regulations for 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 paras. 1 and 2 of the Regulations for the Status and Transfer of Players

(edition 2005) and, on the other hand, to the circumstances that the relevant contract had been concluded on 15 July 2005 and that the player's claim was lodged with FIFA on 3 January 2007. In view of the aforementioned, the Dispute Resolution Chamber concluded that the current FIFA Regulations for the Status and Transfers of Players (edition 2005, hereinafter; the Regulations) are applicable in the case at hand as to the substance.

5. Entering into the substance of the matter, the Dispute Resolution Chamber deemed that first and foremost it had to focus on the question whether the employment contract concluded between the Claimant and the Respondent on 15 July 2005, valid from the date of signature until 30 June 2007, had been terminated by the Claimant for just cause or not.
6. Firstly, the Chamber acknowledged that the player X considered the failure of the club Y to pay the instalments which had become due on 30 September 2006 and 30 December 2006, respectively, as well as premiums amounting to EUR 2,400 to constitute a just cause for the termination of the relevant employment contract.
7. Furthermore, the members of the Dispute Resolution Chamber noted that by means of his complaint dated 3 January 2007, the player X had announced his intention to terminate the contract and had set a deadline of two days in order for the club to pay the outstanding amount, in default of which the player would claim the remaining contract value as compensation for breach of contract.
8. In this respect, the Dispute Resolution Chamber noted that the club had, upon having been confronted with the player's claim, promptly drafted an "*Out-of-Court Complaint and Invitation*" which was served to the player's wife by a court bailiff on 9 January 2007. Furthermore, the court bailiff had at the same time apparently been entrusted with the delivery of a cheque in the amount of the then outstanding installments and premiums which, in case it could not be handed out to the player, was to be deposited with the "*Deposit and Loans Fund*". In this regard, the Dispute Resolution Chamber paid due consideration to the fact that the statement of Y, according to which this proceeding constituted a regular legal procedure in G which a debtor must follow in case the payee refuses to receive his/her dues or cannot be located, had not been contested by the player X. The player had instead replied that the club could have transferred the outstanding amount to his bank account, since this had allegedly always

been the regular payment procedure since July 2005. In this respect, the members of the Dispute Resolution Chamber took due note of the fact that this assertion of the player had proved to be inaccurate, as evidenced by the club and also acknowledged by the player in his correspondence dated 13 March 2007.

9. With regard to the foregoing, the Chamber acknowledged that, whereas the wife of the player X had accepted the "*Out-of-Court Complaint and Invitation*" on 9 January 2007, she had apparently refused to receive the cheque in the amount of EUR 42,400 which had been presented to her by the court bailiff. In this respect, the Chamber ascertained that the player had neither contested the respective allegation nor presented any justification for this refusal on the part of his wife. As to the subsequent argument of the player, according to which the cheque presented by the court bailiff could not be verified immediately as to whether it was covered or not, the Chamber did not find this reasoning to be entirely convincing, since the player had apparently regularly received his remuneration from the club by means of cheques without alleging any problems in this respect.
10. The Dispute Resolution Chamber furthermore observed that the player X had omitted to present any evidence to the Chamber demonstrating that he had unsuccessfully attempted to receive the outstanding installments and premiums from Y or put the club in default before lodging his claim with FIFA. The Dispute Resolution Chamber also took note of the fact that the player had stopped rendering his services for the club as of 5 January 2007 and had left G before the Dispute Resolution Chamber had been able to come to a decision in the present case. In view of the foregoing, the Chamber found that the player X had failed to demonstrate that he had undertaken any efforts whatsoever with the aim of reaching an amicable settlement to the present matter before proceeding to the termination of the contract and the filing of his claim with FIFA at the beginning of the commencing transfer period.
11. On account of the above, and particularly in view of the strikingly short time limit set by the player for the club to settle the outstanding amount, the members of the Dispute Resolution Chamber found that they had no alternative but to doubt that the player X had acted in good faith in the present case. Notwithstanding the question whether or not there had been an oral agreement between the player and the club with regard to the outstanding instalments for September and December 2006, the Chamber considered that the club had, as soon as it for the first verifiable time had been confronted with the player's

claim, promptly proceeded to the payment of the outstanding amount, this apparently and uncontestedly in accordance with a procedure stipulated by the national law of G, and that therefore the circumstances at hand did not justify a termination of contract for just cause on the part of the player B.

12. The members of the Dispute Resolution Chamber were also eager to stress that the club had apparently never been in default of the player's monthly salaries, which had uncontestedly been duly paid by the Respondent. In this respect, the Chamber pointed out that the outstanding amount of EUR 42,400 had not been composed by the player's monthly salaries, but by scheduled payments stipulated in the relevant employment contract and premiums for matches. The Dispute Resolution Chamber also took into account that the club had reiterated its interest in keeping the player X and had apparently continued to pay the player's rent and place a car at the player's disposal even after he had lodged his claim. Consequently, the Chamber found that it could not agree with the allegations of the player X, according to which the club had acted in bad faith towards him.
13. In view of all of the above-mentioned circumstances surrounding the present case, the Dispute Resolution Chamber determined that the club Y could not be considered to have committed a breach of contract justifying a termination of the relevant agreement for just cause and the payment of a corresponding compensation. Therefore, the Chamber established that the contract at the basis of the present dispute was still valid.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, X, is rejected.
2. It is established that a valid contractual relationship still exists between the Claimant, X, and the Respondent, Y.
3. According to art. 61 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:

Urs Linsi
General Secretary

Encl. CAS directives