Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 22 July 2004,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Gerardo Movilla (Spain), member

Michele Colucci (Italy), member

Jean-Marie Philips (Belgium), member

Mario Gallavotti (Italy), member

on the claim presented by

Player A,

as *Claimant*

against

Club B,

as *respondent*

regarding a contractual dispute.

Facts of the case

In March 2003, Association C requested the international registration transfer certificate of A to the Association of Club B, which refused to issue it based on the existence of a valid employment contract between A and B.

In view of the above, Association C contacted the FIFA Administration for its assistance.

In this regard, at the request of the FIFA Administration, B forward, via its Association, a copy of an employment contract allegedly signed by the player on 4 December 2001, valid until the end of the 2006 season.

A category denies having signed the relevant contract submitted by B and consequently, does not recognise its validity, which in his opinion appears to be a combination of several documents.

As a consequence, the FIFA Administration requested B to be provided with "a legible copy of the aforementioned employment contract" and later on, with the original copy of the relevant document, but B has never offered any reaction to these requests to date.

A underlined the fact that B has disregarded several deadlines imposed by the FIFA Administration and, in particular, it has failed to provide the original copy of the disputed employment contract.

In light of such behaviour, the player claims to be presently prevented from challenging the authenticity of the relevant document upon which the entire dispute is founded, in country C, since in view of the political situation in club B's country as well as of his refugee status, he cannot file a claim before the courts in club B's country.

Moreover, the player stands that according to the disputed employment contract provided by B, by the date it was allegedly signed, i.e. on 4 December 2001, he was only 16 years old and therefore legally prevented from signing a 5-years' contract.

In fact, the player defends that even if he would have signed the alleged employment contract, in accordance with Art. 35 of the revised FIFA Regulations for the Status and Transfer of Players, he would be prevented from signing a contract for a period longer than three years.

As a consequence, the player asserts that the disputed employment contract provided by B should be considered invalid in its entirety and could not produce any legal effects.

In this respect, A asserts that the effect of the aforementioned Article is to invalidate the entire clause that provides for the duration of the contract and not to amend it to a shorter term. There is no provision in the relevant Regulations for the substitution to a shorter term and to make such a substitution would be to give the relevant Article an entirely different meaning to that provided for in the Regulations.

The player defends that if the relevant Article were given its natural meaning, the present contract would be of an indeterminate length, i.e. without a valid term and therefore should be considered invalid in its entirety.

Furthermore, the player underlines the fact that he was granted political asylum in C country after having left club B's country on 5 February 2002 and, as a consequence, even if a contract were found to exist, it would be frustrated by his refugee status, since it constitutes a serious threat to his life/freedom to return to club B's country. For this reason, the player believes that it is imperative that he is allowed to proceed with his football career abroad.

A copy of the Grant of Status (Asylum) from C country's Home Office, dated 14 August 2002, confirming that A has been granted political asylum, has been provided to the FIFA Administration.

A understands that his refugee status concedes him just cause to unilaterally terminate any employment contract that he would have eventually signed with a club from club B's country before he left to C country in February 2002.

The player also sustains that, even if he would be considered to have breached an employment contract with B, for not complying with his contractual obligations since February 2002, he would have been suspended from his football activity for a maximum period of only 6 months, which is the maximum period that the revised FIFA Regulations for the Status and Transfer of Players allows as a sport sanction for unilateral breach of contract without just cause or sporting just cause, as stipulated in its Art. 23 Par. 1.

The player enhanced the fact that he has been prevented from working/playing since the beginning of 2002 and that it cannot be the purpose of the relevant FIFA Regulations to permit a player's career to be jeopardized to such extend.

Finally, A adds that if the disputed contract would be considered as valid, then B would be in fundamental breach of contract on the grounds that no payment has ever been made to him under the terms of the relevant remuneration clause.

In light of the above, A requests FIFA's competent body to authorize him to proceed with his football career for a club of his election, since his football career has already been severely damaged.

On the other hand, B has always failed to provide the FIFA Administration with a detailed position in the present matter as well as with its final statement.

On 29 January 2004, the FIFA Administration informed both parties that the matter regarding the forgery of A's signature would have to be brought in front of a criminal court, since FIFA is not competent to deal with such charges.

In view of the damages that his personal and professional life is suffering due to his prevention from playing football, A insisted that FIFA's competent body immediately took a decision in the present matter.

Considerations of the Dispute Resolution Chamber

The Dispute Resolution Chamber shall review disputes coming under its jurisdiction pursuant to art. 42 of the revised FIFA Regulations for the Status and Transfer of Players, at the request of one of the parties to the dispute.

In accordance with art. 42 par. 1 lit. (b) of the FIFA Regulations for the Status and Transfer of Players, it falls within the purview of the Dispute Resolution Chamber to determine whether one of the parties has committed a unilateral breach of contract without just cause.

Also, the Dispute Resolution Chamber will establish the amount of compensation to be paid and decide whether sports sanctions must be imposed (cf. art. 42, par. 1, b, ii and iii in connection with art. 22 and 23 of the aforementioned Regulations).

Therefore, the Dispute Resolution Chamber is the competent body to decide upon the present litigation with regard to the validity of the relevant employment contract as well as any eventual breaches of contract that may have occurred.

Once its competence was thus established, the Dispute Resolution Chamber went on to treat the substance of the case.

The Dispute Resolution Chamber took note of the fact that the employment contract signed on 4 December 2001 between A and B is a 5-years' duration contract and that the player was only 16 years old at the time of the contract's signature.

In this respect, the Chamber underlined the content of art. 35 of the revised FIFA Regulations for the Status and Transfer of Players, according to which *"a player who has not reached his eighteenth birthday may sign a contract as non-amateur only for a period not exceeding three years. Any clause referring to a longer period shall not be recognised by FIFA or a national sports tribunal"*.

As a consequence, the Dispute Resolution Chamber concluded that A was not allowed to sign a 5-years contact at the age of 16 years old.

However, the Chamber was of the opinion that the invalidity of the contractual clause that stipulates the contract's duration, does not affect the validity of the entire contract and therefore, decided to reduce its duration to three years, i.e. until 4 December 2004, which is the maximum period for which a minor of eighteen is allowed to sign an employment contract.

With regard to the political asylum granted to A, the Chamber underlined that, the fact that a player possesses a refugee status does not automatically grant him, only by itself, just cause to terminate an employment relationship nor entitles him to be registered elsewhere with a club affiliated to another Association.

Notwithstanding the above, the Chamber acknowledged that B has not only failed to provide the FIFA Administration with the original copy of the relevant employment contract, but also with a detailed position in the present matter as well as with its final statement.

Furthermore, the Dispute Resolution Chamber enhanced the fact that both parties have failed to comply with their respective contractual duties since February 2002 and that their relationship is disrupted to a point that its continuation does not appear possible any longer.

In light of all the above, and since there are only four months left until the relevant employment contract expires, the Dispute Resolution Chamber was of the opinion that the player would be the only jeopardized in case he would be prevented from being immediately registered for another club of his choice.

As a consequence, the Dispute Resolution Chamber decided that A shall be released from his contractual relationship with B and authorized to immediately proceed with his football career and therefore considered free to sign for another club of his election without any compensation being due to B.

Decision of the Dispute Resolution Chamber

1. The claim lodged by A is accepted.

2. A is considered free to sign for the club of his election without any compensation being due to B.

3. This decision may be appealed before the Court of Arbitration for Sport (CAS) in accordance with art. 60 par. 1 of the FIFA Statutes. The statement of appeal must be sent to the CAS directly within 10 days of receiving notification of this decision and has to contain all elements in accordance with point 2 of the directives issued by the CAS, copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for the filing of the statement of appeal, the appellant shall file with the CAS a brief stating the facts and legal arguments giving rise to the appeal (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:

Jérôme Champagne
Deputy General Secretary

Enclosed: CAS directives