

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 10 August 2011,

in the following composition:

Geoff Thompson (England), Chairman

Philippe Piat (France), member

Jon Newman (USA), member

Theodoros Giannikos (Greece), member

Thilina Panditaratne (Sri Lanka), member

on the claim presented by the player,

N,

as Claimant

against the club

K,

as Respondent

regarding a contractual dispute between the parties

I. Facts of the case

1. On 14 April 2010, the player N (hereinafter: *the Claimant*), born on 11 December 1982, lodged a complaint in front of FIFA against the club K (hereinafter: *the Respondent*) for breach of the employment contract (hereinafter: *the contract*) allegedly concluded between the parties on 7 November 2008.
2. In this respect, the Claimant stated that he was never provided with a copy of the contract. However, in order to prove that a labour relationship had existed between the parties, the Claimant submitted to FIFA the following documents:
 - A copy of the player passport of the Claimant issued by the Football Federation P which indicated that the Claimant had joined a club C on 7 November 2008;
 - A copy of a cheque dated 11 April 2009 for the amount of EUR 2,000 issued to the Claimant and signed by the Respondent, allegedly pertaining to the salary of March 2009;
 - A "*receipt voucher*" for the amount of EUR 2,000 issued by the Claimant's bank;
 - A copy of the results of a medical test carried out on the Claimant on 28 January 2009 in a private hospital in country C.
3. The Claimant claimed that the contract he allegedly concluded with the Respondent was valid from 7 November 2008 until 30 June 2009 and that, according to said contract, he was entitled to receive from the Respondent a net monthly salary of EUR 2,000, payable on the 15th day of each month, as well as a "*holiday pay*" and a "*Christmas pay*". In this context, the Claimant claimed to have received from the Respondent his salary for November 2008, December 2008, January 2009, only a partial payment for his salary of February 2009 (EUR 500) as well as his salary for March 2009 (cf. point 2 above).
4. Consequently, the Claimant requested from the Respondent the total amount of EUR 11,500, specified as follows:
 - EUR 1,500 as the remaining part of his salary of February 2009;
 - EUR 2,000 as his salary of April 2009;
 - EUR 2,000 as his salary of May 2009;
 - EUR 2,000 as his salary of June 2009;
 - EUR 2,000 as "*holiday pay*";
 - EUR 2,000 as "*Christmas pay*".EUR 11,500 = Total amount

5. Finally, the Claimant requested that the Respondent would be ordered to pay the legal fees and expenses incurred by the Claimant in the amount of EUR 4,000, as well as to bear the costs of the present proceedings.
6. In spite of having been invited to do so, the Respondent never responded to the claim lodged against it, although it was informed that in absence of a reply, a decision would be taken on the basis of the information and evidence available.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as: *the Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber took note that the present matter was submitted to FIFA on 14 April 2010. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2008 (hereinafter: *the Procedural Rules*), are applicable to the matter at hand (cf. art. 21 par. 2 and 3 of the Procedural Rules).
2. Subsequently, 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 (edition 2010) the Chamber is competent to decide on the present litigation, which concerns a dispute with an international dimension between a player and a club in relation to an alleged employment relationship between the two aforementioned parties invoked by the player.
3. Furthermore, 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 confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2009 and 2010) and considering that the present claim was lodged in front of FIFA on 14 April 2010, the 2009 edition of the said Regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.
4. Its competence and the applicable regulations having been established and entering into the substance of the matter, the Chamber started by acknowledging the above-mentioned facts as well as the documentation contained in the file.

5. In doing so and first of all, the Chamber took note that the Respondent had failed to present its response to the claim lodged against it by the Claimant, despite having been invited to do so. Therefore, the Chamber concluded that, in this way, the Respondent had renounced its right to defence.
6. As a consequence, the Chamber established that in accordance with art. 9 par. 3 of the Procedural Rules a decision shall be taken upon the basis of the documents on file, in other words, upon the statements and documents presented by the Claimant.
7. Turning its attention to the arguments of the Claimant, the Chamber took due note that the Claimant asserted it had entered into an employment contract with the Respondent valid as from 7 November 2008 until 30 June 2009. Equally, the Chamber noted that the Claimant requested the payment of the amount of EUR 11,500 from the Respondent corresponding to the alleged outstanding salaries for the months of February, April, May and June 2009, the holiday and Christmas bonus, as well as the payment of the amount of EUR 4,000 as compensation for the legal fees incurred by the Claimant. The Chamber duly noted that the Claimant claimed that according to the employment contract he was entitled to receive a net monthly salary of EUR 2,000, payable on the 15th day of each month as well as a "*Holiday pay*" and a "*Christmas pay*", both amounting to EUR 2,000.
8. In this respect, the Chamber also noted that the Claimant asserted to have received from the Respondent his salaries for the months of November 2008, December 2008, January 2009, a part of February 2009 and March 2009.
9. Furthermore, the Chamber took into account that the Claimant did not present a copy of the alleged employment contract concluded with the Respondent, but instead presented documents which, in the Claimant's view, proved that an employment contract had been concluded between the Claimant and the Respondent. Therefore, the Chamber firstly focused its considerations on the question whether or not an employment contract had indeed been concluded between the parties.
10. In view of the above, the members of the Chamber 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 respective burden of proof. The application of this principle in the present matter led the members of the Chamber to conclude that it was up to the player to prove that the

employment contract, on the basis of which he claimed his alleged outstanding salaries, indeed existed.

11. In this respect, the Chamber acknowledged that, in order to prove the existence of a contractual relationship, the Claimant presented several documents. First of all, the Chamber noted that the Claimant presented a copy of his player passport issued by the Football Federation P which indicated that the Claimant had joined a country C club on 7 November 2008. However, the Chamber pointed out that the player passport did neither indicate whether the Claimant was in fact registered with the Respondent nor whether the player was registered in country C as a professional or as an amateur. Also, the Chamber observed that the player passport indicated that the Claimant was registered as an amateur with several clubs in country P both before leaving to country C as well as after returning to the country P.
12. Equally, the Chamber noted that the Claimant had submitted a cheque issued to the Claimant and signed by the Respondent, allegedly pertaining to the salary of March 2009, as well as a *"receipt voucher"*. In this respect, the Chamber wished to emphasize that the existence of one single cheque and a *"receipt voucher"* could not unequivocally prove the existence of an employment contract and took hereby into consideration that the Claimant did not provide any documentary evidence in relation to the alleged salary payments received for the months of November 2008, December 2008, January 2009 and a part of February 2009.
13. As to the medical test referred to by the Claimant in its claim, the Chamber examined the document presented and noted that it did not contain any indications establishing a link between the Claimant and the Respondent.
14. On account of the above and in particular of the fact that the Claimant failed to present any other document proving beyond doubt that in fact an employment contract had been concluded by and between the Claimant and the Respondent, the Chamber agreed that a player passport, the existence of one cheque, a receipt voucher and a medical test not carrying the names of the parties, could not be considered sufficient evidence demonstrating a contractual link between the parties.
15. Based on the above, and taking into account all the documentation provided by the Claimant, the Chamber concurred that the Claimant had not provided sufficient evidence to prove the existence of a contractual relationship with the Respondent.

16. As a result, the Chamber concluded that it had no alternative but to reject the Claimant's claim.
17. Finally, the Chamber decided to reject the Claimant's claim for legal fees in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber's respective longstanding Jurisprudence.

III. Decision of the Dispute Resolution Chamber

The claim of the Claimant, N, is rejected.

Note relating to the motivated decision (legal remedy):

According to article 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:

Jérôme Valcke
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Encl. CAS Directives