

# Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 28 September 2006,

in the following composition:

**Slim Aloulou** (YY), Chairman

**John Didulica** (Australia), Member

**Theo van Seggelen** (Netherlands), Member

**Essa M. Saleh Al Housani** (United Arab Emirates), Member

**Philippe Diallo** (France), Member

on the claim presented by the

**Player X**, XX,

represented by Mr H

*as Claimant*

against the club,

**Y**, YY,

*as Respondent*

regarding a contractual dispute arisen between the parties involved.

## I. Facts of the case

1. On 25 August 2005 the XXplayer X (hereafter: *the Claimant*), born on 21 June 1987, signed a contract of employment with the YY club Y (hereafter: *the Respondent*).
2. The contract term was from 25 August 2005 to 30 June 2010.
3. In accordance with the financial provisions in art. 7 of the contract of employment, the Claimant was entitled to the following payments:
  - 2005/2006 season: monthly salary of USD 1,000.00, bonus of USD 10,000.00
  - 2006/2007 season: monthly salary of USD 1,000.00, bonus of USD 15,000.00
  - 2007/2008 season: monthly salary of USD 1,250.00, bonus of USD 25,000.00
  - 2008/2009 season: monthly salary of USD 1,500.00, bonus of USD 40,000.00
  - 2009/2010 season: monthly salary of USD 3,000.00, bonus of USD 50,000.00
4. It was also foreseen that the Claimant would receive one return flight between Tunis and Lagos per season for the full term of the contractual relationship. Additionally, it was agreed that the accommodation and subsistence costs would be met by the Respondent.
5. In art. 8 of the employment contract, it was agreed that should the Claimant figure among the three foreign players ("senior players"), he would receive a bonus of USD 40,000.00 and a monthly salary of USD 3,000.00, this for the remainder period of his contract.
6. On 2 June 2006, the Claimant filed a claim with FIFA against the Respondent.
7. The Claimant claimed that the Respondent had not paid his salary for three months, i.e. for the months of March, April and May 2006, although the president of the Respondent had verbally promised him the payment on several occasions.
8. The Claimant also claimed that more than three foreign players had been in the club's first team since January 2006 and that therefore, in accordance with the corresponding provision in the employment contract, he was to receive a salary of USD 3,000.00 plus a bonus of USD 30,000.00 (USD 40,000.00 minus USD 10,000.00 that the Respondent had already paid him).

9. The Respondent submitted payment receipts as proof that the Claimant had received his full salary since the beginning of the contractual relationship until May 2006 as well as his bonuses. In this respect the Respondent added that the salary owing to the Claimant until May 2006 had amounted to USD 9,000.00 (USD 1,000.00 x 9), which corresponded to the sum of TND 12,600.00. The Respondent explained that it had even paid the Claimant TND 12,995.00, as could be seen from the receipts submitted.
10. In his second submission the Claimant reiterated that since January 2006 he should have received both a salary of USD 3,000.00 and a bonus of USD 30,000.00 (more than three foreign players in the squad).
11. He also repeated that he had not received his salary for the months of March, April and May 2006.
12. In its second submission, the Respondent rejected the Claimant's interpretation that he was among the club's three foreign players and should therefore have received both a higher salary and a higher bonus. To this regard, it referred to the contents of art. 69 of the "*Règlements du Foot-Ball Professionnel*" in YY.
13. In this respect the Respondent explained that in accordance with art. 69 of the "*Règlements du Foot-Ball Professionnel*" in YY, clubs in National Division A in YY could have a maximum of three foreign players classified as "senior". As the Claimant concerned had yet to reach the required age for a "senior" player, however, he was not yet among the three foreign players in accordance with the aforementioned regulations and therefore could not benefit from the additional payments set forth at art. 8 of the relevant employment contract.
14. The Respondent also emphasised that it had met its obligations by paying the monthly salary of USD 1,000.00 and the bonus of USD 10,000.00 to the Claimant.
15. FIFA then requested the Claimant again to comment on the payment receipts submitted by the Respondent.
16. The Claimant informed FIFA that prior to the signing of the employment contract, the Respondent had promised him a better salary than the agreed USD 1,000.00 if he figured among the three foreign players in the team (art. 8 of the employment contract). He was satisfied with the inclusion of this section in the contract of employment, as he believed in his ability to achieve this objective. However, the Respondent had never informed him of the conditions

of art. 69 of the relevant "*Règlements du Foot-Ball Professionnel*" in YY, nor had they given him a copy of this regulations.

17. Further, the Claimant is of the opinion that his father could have signed a document on his behalf, as he was not yet 20 years of age. Finally the Claimant added that he felt cheated by the Respondent because the latter had promised him several times that he would receive his money (USD 3,000.00 per month plus an additional bonus of USD 30,000.00), as he had been among the three foreign players in the team since January 2006.
18. The YY Football Federation was twice requested (letters dated 26 July and 9 August 2006) to issue a statement with regard to art. 69 of the "*Règlements du Foot-Ball Professionnel*" in YY and, in particular, to name the conditions required for a foreign player to be considered a "senior" player.
19. The Respondent then explained, via the YY Football Federation, that for the 2005/2006 season, a player is qualified as a "senior" player, within the meaning of art. 69 of the "*Règlements du Foot-Ball Professionnel*" in YY, only if he was born before 1985. In view of the fact that the Claimant was born on 21 June 1987, he had signed an "Olympique" licence (U-21) with the Respondent and been placed in this category for the Respondent.
20. The Respondent attached a copy of the Claimant's licence (Olympique category) and a copy of the extract from the circular letter of the YY Football Federation for the 2005/2006 season to their submission.
21. The circular states that players taking part in the championship in YY are placed in seven categories according to their age. This means that only players born before 1985 are to be classed as "senior" players.

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

### **a) As to the competence of the Dispute Resolution Chamber**

1. First of all, the Chamber analysed whether it was competent to deal with the matter at stake. In this respect, it referred to art. 18 par. 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 2 June 2006, as a consequence the Chamber concluded that the revised Rules Governing

Procedures (edition 2005) on matters pending before the decision making bodies of FIFA are applicable to the matter at hand.

2. With regard to the competence of the 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 combination 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. As a consequence, the Dispute Resolution Chamber is the competent body to decide on the present litigation involving a XX player and a YY club in connection with an employment contract.
4. Subsequently, the members of the 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 par. 1 and 2 of the Regulations for the Status and Transfer of Players (edition 2005) and, on the other hand, to the fact that the relevant contract at the basis of the present dispute was signed on 25 August 2005 and the claim was lodged at FIFA on 2 June 2006. In view of the aforementioned, the Chamber concluded that the current FIFA Regulations for the Status and Transfer of Players (edition 2005, hereafter: the Regulations) are applicable to the case at hand as to the substance.

#### **b) As to the substance of the present dispute**

5. Entering into the substance of the matter the members of the Chamber acknowledged the documentation contained in the file, and in view of the circumstances of the matter at stake, focused its considerations on the question whether the Claimant, as ascertained by him, did not receive from the Respondent his salaries for the months of March, April and May 2006 as well as to the question whether the Claimant should be entitled to get a higher salary, i.e. USD 3,000.00, and a higher bonus, i.e. USD 40,000.00.

##### *b1) Payment of the Claimant's salaries*

6. In this respect, the members of the Chamber started by acknowledging that the Claimant and the Respondent signed on 25 August 2005 an employment contract with validity until 30 June 2010. Furthermore, it was observed by the

members of the Chamber that the employment contract foresaw in its art. 7 the remuneration due to the Claimant for the respective seasons of the contractual relationship.

7. With regard to the issue of allegedly outstanding salary payments due to the Claimant, the members of the Chamber took note of the Claimant's allegation that the Respondent had failed to pay him his salaries for the months of March, April and May 2006.
8. In this respect, on the basis of art. 7 of the employment contract, the Chamber took note that the Claimant was, *inter alia*, entitled to receive from the Respondent for the season 2005/2006 a monthly salary of USD 1,000.00 as well as a bonus amounting to USD 10,000.00. Furthermore, and turning its attention to the Respondent with regard to its alleged failure to pay the Claimant his salaries, the members examined the various payment receipts submitted by the Respondent and noted that all those payment receipts carried the signature of the Claimant, a fact that was even acknowledged by the Claimant.
9. After having examined the payment receipts submitted by the Respondent, the members of the Chamber stated that even though the relevant salary and bonus payments were effected in a certain irregularity, it can be nevertheless clearly elicited that the overall amount paid to the Claimant in consideration of the payment receipts submitted by the Respondent covered, yet even slightly more, the salaries until May 2006.
10. Finally, the members acknowledged the Claimant's complaint according to which the president of the Respondent had orally promised him the payment of the said allegedly outstanding three salaries. However, the Claimant did not provide FIFA with written documentary evidence regarding the alleged promise of the president of the Respondent to pay him those salaries and therefore this argument put forward by the Claimant could not be taken into account by the Chamber for lack of evidence.
11. Therefore, the deciding body first stated that the Respondent had complied with its financial obligations towards the Claimant and duly paid the Claimant's salaries until May 2006. Thus, the Chamber concluded that it cannot uphold the Claimant's allegation in this respect and has to reject the latter's claim for outstanding salary payments.

*b2) Right to a higher salary and a higher bonus*

12. In continuation, the members of the Chamber went on to deliberate the Claimant's statement that, due to the fact that more than three foreign players had been in the Respondent's first team since January 2006, he was to receive, from that moment on, a salary of USD 3,000.00 instead of USD 1,000.00, as well as a bonus of USD 40,000.00 instead of USD 10,000.00. The members noted that in the Claimant's opinion, such increments of his salary and bonus had been contractually agreed in art. 8 of the employment contract signed by the parties concerned on 25 August 2005.
13. On the other hand, the members noted that the Respondent, by referring to art. 8 of the employment contract in connection with art. 69 of the "*Règlements du Foot-Ball Professionnel*" in YY, rejected the Claimant's interpretation that he was among the three foreign players of the Respondent.
14. In view of the divergent statements of the parties, the deciding body went on to examine the relevant art. 8 contained in the employment contract the parties to the dispute concluded.
15. In doing so, the members of the Chamber established that art. 8 of the employment contract provided for an increment of the Claimant's salary and bonus in case he would be registered with the Respondent among the three foreign players.
16. Furthermore, the Chamber emphasized, however, that art. 8 of the employment contract made though also an explicit reference to art. 69 of the "*Règlements du Foot-Ball Professionnel*" in YY. Thus, the members remarked that the said provision needs also to be taken into account in order to determine the Claimant's entitlement for higher salary and higher bonus as maintained by him.
17. After having been provided with an excerpt of the said Regulations and the corresponding circular letter of the YY Football Federation concerning the football season 2005/2006 in YY, the members acknowledged that for clubs participating in the National Division A in YY, as the Respondent did, a maximum of three players classified as "senior" are permitted. In this respect, and taking into account the relevant circular letter of the YY Football Federation for the season 2005/2006, which provides for different categories of

players depending on the date of birth, the members of the Chamber observed that the Claimant had signed an "Olympique" licence (U-21) with the Respondent and in this capacity was not to be considered as a "senior" player. The Chamber noted that, in order for the Claimant to be registered as a senior player with the Respondent, the Claimant would need to have been borne before 1985.

18. Then the Chamber took note of the indications contained in the employment contract, which were not contested by the Claimant, that he was borne on 21 June 1987.
19. Therefore, in view of the above considerations, the deciding body concluded that the Claimant had yet to reach the required age for a "senior" player. Moreover, since the Claimant was thus not yet among the three foreign players in accordance with the aforementioned regulations, he can therefore not benefit from the additional payments (both a higher salary and bonus) set forth at art. 8 of the employment contract.
20. In view of the all the above, the deciding body held that the Respondent had fully complied with its financial obligations towards the Claimant and therefore had to reject the claim submitted by the Claimant.
21. Moreover, the Chamber underlined that the employment contract signed between the parties on 25 August 2005 remains in force.

### III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, player X, is rejected.
2. The employment contract entered into between the Claimant, player X, and the Respondent, Club Y, remains in force.
3. According to art. 61 par. 1 of the FIFA Statutes this decision may be appealed before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 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).

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Encl: CAS directives