Decision of the

Dispute Resolution Chamber

passed in Zurich, Switzerland, on 17 January 2014,

in the following composition:

Geoff Thompson (England), Chairman
Theo van Seggelen (Netherlands), member
Takuya Yamazaki (Japan), member
Mario Gallavotti (Italy), member
Damir Vrbanovic (Croatia), member

on the claim presented by the club,

Club E, from country T

as *Claimant*

against the player,

Player K, from country N

as *Respondent 1*

and the club,

Club U, from country S

as *Respondent 2*

regarding an employment-related dispute arisen between the parties

I. Facts of the case

1. On 20 December 2008, Club E, from country T (hereinafter: *the club* or *the Claimant*) and Player K, from country N (hereinafter: *the player* or *the Respondent 1*), born in January 1991, signed an employment contract (hereinafter: *the contract*) valid as from 20 December 2008 until 19 December 2011.

2. On the same date, the father of the player (hereinafter: *the father*) signed a statement by means of which he authorised his son, the player, to sign a "covenant" with the club.

3. Additionally, on 17 December 2008, the father signed with the club a contract as coach of the youth basketball team, valid as of 15 December 2008 until 14 December 2009.

4. According to art. 3 par. 1 of the player's contract, the player would receive USD 1,000 per month, this amount being subject to a possible revision/increase depending on the player's improvements, in particular as to whether he integrates the club's senior football team.

5. According to art. 3 par. 3 of the contract, the player was also to receive, *inter alia*, a performance bonus in the maximum amount of USD 10,000 per season, payable in four trimestral installments, the definitive amount of which was to be determined on the basis of the number of official matches played by the team and the number of matches the player would have played with the senior team.

6. According to art. 4 of the contract, the player was also entitled to receive match premiums based on the club's indications as well as payments relating to his accommodation, medical care and insurance for work-related accidents. Additionally, the player was also to benefit from one round flight ticket country N-country T per season.

7. On 24 December 2008, the country N Football Association issued an International Transfer Certificate in favour of the country T Football Federation with regard to the player.

8. On 30 January 2009, after negotiations between the player's agent and Club U, from country S, in December 2008, and the signature of a pre-contract, the player and Club U signed an employment contract, entering into force on 30 January 2009 and coming to an end on 30 June 2011.

9. According to said contact, Club U was to pay to the player as salaries the amount of EUR 12,500 for the first sporting season, EUR 55,000 for the second sporting season and EUR 60,000 for the third sporting season.

10. On 29 May 2009, the Claimant contacted FIFA and asked for assistance in order for the player to return to the club after his release for country N's association team on 29 December 2008.

11. Following the club's aforementioned petition, FIFA wrote to the country N Football Association to inform it of the club's petition and to inform the player of the situation.

12. On 11 November 2009, the club presented the following claim for compensation for breach of contract against the player, based on the player's alleged unilateral breach of contract. In this respect, the club asserted that although a valid employment contract was signed with the player, the latter never rendered his services to the club and signed another employment contract with Club U, from country S, without having obtained the Claimant's prior consent. (Note: unless otherwise indicated, all amounts listed in the following table are amounts in USD):

Nature	Amounts	Basis for the payment(s)
Transfer compensation and other expenses related to the player's transfer	50,000	1/ payment of a transfer compensation of 40,000 to the country N club O for the player's recruitment; 2/ salaries for December 2008 (1,000) and an advance on the performance bonus (2,000); 3/ various flight tickets; 4/ expenses related to the player's stays in country T in August 2008 and in December 2008 and commissions of other player's agents involved in the transfer
Future salaries	36,000	1,000 x 12 months x 3 seasons
Future bonus	30,000	10,000 x 3 seasons based on performance bonus
Future match premiums	46,000	1,000 x 20 matches x 3 seasons
Club's final ranking bonuses	180,000	in case of victory in Africa Champion's league, National league, country T Cup, as per the Club Internal Regulations
Accommodation	100,000	
Insurance	2,500	
Flight tickets	3,000	1 per season x 3 seasons
TOTAL 1	447,500	
Compensation claimed in case of non-return of the player by 31.01.2010	1,000,000	

TOTAL 2	1,447,5000	

13. On 13 November 2010, the club also lodged a claim for inducement to breach of contract against Club U, from country S, *i.e.* the club which the player joined after having signed the employment contract with the Claimant.

14. In reply to the claim, the player firstly asserted that he is not aware of having signed an employment contract with the Claimant, nor is he aware of having ever been bound by any contract to the Claimant.

15. The player further asserted that he never received any monies in connection with an alleged employment relation with the Claimant.

16. Furthermore, the player held that he does not acknowledge the signature on the contract dated 20 December 2008, which the club presented as his signature, and which, "*strangely*", only appears on the last page of the contract.

17. In this respect, the player highlighted that on said date, he was a minor and that the contract does not bear the signature of his legal guardian.

18. In continuation, the player pointed out that even if one was to consider that the signature appearing on the contract was indeed his signature, this would be the result of having been "*tricked*" by the club to sign a contract he had not been informed about.

19. Additionally, the player recalled that there are regulations that protect minor players and which only allow their transfer provided regulatory conditions are met.

20. However, in this case, the player pointed out that the club is trying to mislead the decision-making body by also submitting a basketball coach contract signed with Mr A, the player's father.

21. In this way, so the player, the club tried to appear as having proceeded to the player's transfer based on the existence of a situation corresponding to one of the exceptions listed in the Regulations on the Status and transfer of Players.

22. The player concluded by rejecting the club's claim and requested FIFA to take actions against the club for having fraudulently obtained his signature and for having failed, with bad faith, to comply with the aforementioned Regulations.

23. On 9 October 2013, the country S Football Federation informed FIFA that the club, Club U, was dissolved and is no longer affiliated to it.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 11 November 2009. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 par. 1 and 2 of the Procedural Rules).

2. Subsequently, the members of 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 2012), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment related dispute with an international dimension between a country T club, a country N player and a country S club.

3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2012), and considering that the present claim was lodged on 11 November 2009, the 2009 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

4. 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 started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

5. In continuation, the Chamber noted that, on 20 December 2008, the Claimant and the Respondent 1 signed an employment contract valid for three years as from 20 December 2008 until 19 December 2011. Additionally, the Chamber noted that on the same date, the player's father authorised the player to sign a "covenant" with the Claimant.

6. On 30 January 2009, the Respondent 1 and the Respondent 2 signed an employment contract valid as from its signature date and coming to an end on 30 June 2011.

7. The members of the Chamber further noted that, according to the Claimant, the Respondent 1 acted in breach of the employment contract that was signed on 20 December 2008 by not joining the club after his release for country N's association team on 29 December 2008 and by having signed an employment contract with Club U. Consequently, the Claimant asked that the Respondent 1 be held liable for breach of contract without just cause and be ordered to pay compensation for breach of contract amounting to USD 1,447,500. In addition, the Claimant asks that the Respondent 2 be considered as having induced the Respondent 1 to commit a breach of contract and be held jointly liable for the payment of compensation for breach of contract.

8. The Respondent 1, for his part, fully rejected the claim maintaining that he is not aware of having signed an employment contract with the Claimant nor is he aware of having ever been bound by any contract to the Claimant. In this respect, the Respondent 1 asserted that he does not acknowledge the signature on the contract dated 20 December 2008 as his signature.

9. In continuation, the Respondent 1 held that even if one was to consider that the signature appearing on the contract was indeed his signature, this would be resulting of the fact that the Respondent 1 was deceived by the Claimant in signing the employment contract with the Claimant in December 2008.

10. In this respect, the members of the Chamber considered it appropriate to remark that, as a general rule, FIFA's deciding bodies are not competent to decide upon matters of criminal law, such as the ones of alleged falsified signatures or documents, and that such affairs fall into the jurisdiction of the competent national criminal authority.

11. In continuation, the DRC recalled that all documentation remitted shall be considered with free discretion and, therefore, the Chamber focused its attention on the other documents containing the Respondent 1's signature provided by the parties in the context of the present matter. In this regard, the members of the Chamber pointed out that the original version of the employment contract was provided by the Claimant.

12. After a thorough analysis of the documents available on file, in particular, comparing the relevant signatures of the Respondent 1 on the various documents submitted in the present affair, the DRC had no other option but to conclude that, for a layman, the signatures on such documents appear to be the same.

13. Additionally, the Chamber highlighted that the Respondent 1 was 17 years and 11 months old when he signed the employment contract at stake with the Claimant and that this signing was authorised by the Respondent 1's father in writing, this latter point not having been contested by the Respondent 1.

14. In this context, while referring to art. 12 par. 3 of the Procedural Rules, the members of the Chamber deemed it fit to stress that the Respondent 1 has not

presented any documentary evidence demonstrating the invalidity of a contract signed under such conditions in country T.

15. Having so found, the Chamber addressed the Respondent 1's assertion that if one considers that the relevant signature indeed is his, he was deceived by the Claimant in signing the employment contract at stake.

16. In this respect, the Chamber deemed it fit to recall that according to art. 12 par. 3 of the Procedural Rules, any party claiming a right on the basis of an alleged fact shall carry the burden of proof and that in the present situation, the Respondent 1 had not presented any justification or document in support of his allegation.

17. On account of all of the above considerations, the members of the Chamber unanimously agreed that the arguments of the Respondent 1, in accordance with which the employment contract signed with the Claimant in December 2008 was not valid, could not be upheld and established that Claimant and the Respondent 1 had entered into a valid and binding employment contract on 20 December 2008, valid as from 20 December 2008 until 19 December 2011.

18. In continuation, the Chamber reverted to the Claimant's claim that the Respondent 1 had acted in breach of the employment contract by not having joined it in order to execute said employment contract but instead, joined the Respondent 2, with which club he had signed another employment contract on 30 January 2009 valid as from the date of signature until 30 June 2011.

19. In this regard, the DRC was eager to stress that in his response to the Claimant's claim, the Respondent 1 did not deny that he joined the Respondent 2, with which club he signed an employment contract, the duration of which partially covered the period of validity of the employment contract signed with the Claimant, *i.e.* the period of time comprised between 30 January 2009 and 30 June 2011.

20. In addition, the Chamber took into consideration that the Respondent 1 had no valid reasons not to render his services to the Claimant.

21. In view of the above, the Chamber decided that by signing the employment contract with the Respondent 2 on 30 January 2009, which partially covers the period of time on his contract with the Claimant, the Respondent 1 had, in fact, breached the employment contract signed with the Claimant on 30 December 2008 without any just cause.

22. As regards the Respondent 2, the club with which the Respondent 1 signed an employment contract on 30 January 2009 and, by doing so, the Respondent 1 acted in breach of his employment contract with the Claimant, the Chamber took due note that, in the interim, Club U was dissolved and is no longer affiliated to the country S Football Federation. As a result, in accordance with art.6 par.1 of the

Procedural Rules, Club U can no longer be considered a party in front of FIFA's deciding bodies.

23. Having established that the Respondent 1 is to be held liable for the early termination of the employment contract with the Claimant without just cause, the Chamber focussed its attention on the consequences of such breach of contract.

24. In doing so, the DRC first of all established that, in accordance with art. 17 par. 1 of the Regulations, the player is liable to pay compensation for breach of contract to the Claimant.

25. In continuation, the members of the Chamber recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years as well as the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

26. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contains a provision by which the parties had beforehand agreed upon an amount of compensation payable by either contractual party in the event of breach of contract. Upon careful examination of said contract, the members of the Chamber assured themselves that this was not the case in the matter at stake.

27. As regards the calculation of the amount of compensation due by the Respondent 1, the Chamber firstly turned its attention to the remuneration and other benefits due to the player under the existing contract and/or any new contract(s), a criterion which was considered by the Chamber to be essential. The members of the Chamber deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows the Chamber to take into account both the existing contract and any new contract(s) in the calculation of the amount of compensation.

28. According to the employment contract signed by and between the Claimant and the Respondent 1, which was to run for three years more at the moment when the breach of contract occurred, the Respondent 1 was to receive a total invariable remuneration equalling, taking into account the remaining contractual period, the amount of USD 36,000.

29. On the other hand, the remuneration due to the player under the new employment contract, concluded between the Respondent 1 and the Respondent 2, amounted to EUR 127,500. As a result, the player's average income for the relevant period of time

can be calculated in the amount of USD 100,000 on the basis of the documents on file.

30. Having said that, the Chamber referred to its constant practice and the general obligation to mitigate damages, and pointed out in this context that although the relevant employment contract was fully valid and enforceable, the execution thereof had actually never started. Thus the Chamber deemed that such circumstance should be taken into consideration in the calculation of the amount of compensation for breach of contract and decided to reduce the aforementioned amount of USD 100,000 to USD 33,000.

31. As regards the Claimant's request to include bonuses and premiums in the amount of compensation, the members of the Chamber stressed that the payment and the amount of such bonuses and/or premiums are linked to future rankings or matches to be played in the future, *i.e.* after the termination of the relevant contract, and, therefore, are fully hypothetical. Consequently, the Chamber decided not to take these into account while assessing the residual value of the contract.

32. Additionally, and in the absence of any monetary value in the contractual conditions relating to accommodation, insurance/medical care, flight tickets, or of any documentary evidence in this connection (cf. art. 12 par. 3 of the Procedural Rules), the Chamber could not take any of these elements into account.

33. In continuation, referring to art. 17 par. 1 of the Regulations as well as art. 12 par. 3 of the Procedural Rules, the Chamber established that there was no sufficient documentary evidence on file corroborating the Claimant's claim pertaining to fees and expenses allegedly paid or incurred by the Claimant for the acquisition of the Respondent 1 and that, therefore, it could not take this criterion into account in the specific case at hand.

34. In view of all of the above, after having duly taken into account the specificities of the present case, the Chamber decided that the Respondent 1, Player K, has to pay the amount of USD 33,000 to the Claimant, Club E, as compensation for breach of contract.

35. The Chamber then paid due consideration to art. 17 par. 2 of the Regulations, in accordance with which the player's new club is jointly and severally liable for the payment of compensation. In the case at hand, Club U is the player's new club. However, in the light of the consideration under point II./22. above, Club U cannot be held jointly and severally liable for the payment of said compensation.

36. The Dispute Resolution Chamber concluded its deliberations in the present matter by rejecting any further request filed by the Claimant.

III Decision of the Dispute Resolution Chamber

1. The claim of the Claimant is partially accepted.

2. The Respondent 1, Player K, has to pay to the Claimant compensation for breach of contract in the amount USD 33,000 within 30 days as from the date of notification of this decision.

3. In the event that the amount due to the Claimant is not paid by the Respondent 1 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.

4. Any further request filed by the Claimant is rejected.

5. The Claimant is directed to inform the Respondent 1 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.

*****

Note relating to the motivated decision (legal remedy):

According to art. 67 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:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the Dispute Resolution Chamber:

Jérôme Valcke

Secretary General

Encl: CAS directives