Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 19 January 2017,

in the following composition:

Geoff Thompson (England), Chairman
Johan van Gaalen (South Africa), member
Wouter Lambrecht (Belgium), member

on the claim presented by the player,

Player A, Country B,

as *Claimant*

against the club,

Club C, Country D

as *Respondent*

regarding an employment-related dispute between the parties

I. Facts of the case

1. On 31 August 2015, the Player of Country B, Player A (hereinafter: *the Claimant*) signed a document referred to as "*labor agreement*" (hereinafter: *the labour document*) and two documents referred to as "*additional agreement No 1*" and "*additional agreement No 2*", allegedly sent by the Club of Country D, Club C (hereinafter: *the Respondent*) by email dated 30 August 2015. The duration of the labour document is from 31 August 2015 until 31 May 2017.

2. According to art. 2.1 of the labour document, its validity was conditioned to the registration of the Claimant by the Respondent with the Football League E of Country D by no later than 31 August 2015, "*23.00 CET"*. The labour document also stated that in case of non-fulfilment of said condition, "*none of the parties shall owe the compensation to the other one"* and that *"the player sets to his obligations from the date of receipt of a work permit in order established by the current legislation."*

3. According to articles 5.1 and 8.1 of the labour document, the Respondent would pay the Claimant the following amounts:
   - 3,200,000 as a monthly salary;
   - EUR 344,828 as a signing-on fee, payable in 3 equal instalments on 1 October 2015, 31 December 2015 and 1 March 2015.

4. According to art. 1.1 of the "*additional agreement No 1*", art. 5.1 of the labour document was amended as follows: "*the monthly salary of the football player is settled in amount of EUR 40,230."*

5. By letter dated 1 September 2015, the Respondent informed the Claimant in writing that it was unable to register him "*in view of the complicated internal political relations in the summer registration period*" and offered the Claimant to sign "*an employment contract with improved conditions, as of 1 January 2016. In the first six months of the employment contract, salary shall amount to EUR 40,000 in the next two years EUR 45,000. The other conditions stipulated in the contract, including the sign-on fee, remain unchanged"*.

6. On 18 September 2015, the Claimant replied to the Respondent in writing to its letter of 1 September 2015, in the following terms: *"I accept the above offer for the variation of the contract dated 31 August 2015 and consider myself contractually bound to Club C from 1 January 2016 until 30 June 2018 as stipulated in the said contract in conjunction with this offer for its variation."*

7. On 27 November 2015, the Claimant reminded the Respondent that they are contractually bound as from 1 January 2016 until 30 June 2018 under the terms of the labour document and the additional agreements as well as the amendment offered by the Respondent on 1 September 2015. The Claimant offered his services to the Respondent and asked that the Respondent arrange for a work permit, provide a flight ticket and pay the first instalment of the signing-on fee due on 1 October 2015.

8. On 10 December 2015, the Respondent replied by writing that it was "… *quite happy that the player (…) expressed his consent to become the part of our club's squad on conditions offered to him in the draft copy of the employment contract dated to 31 August 2015 as well as in the letter d/d 01 September 2015".* The Respondent also stated that "*For its part, Club C confirms its readiness to enter into the labor relationships with the (…) player starting from 1 January 2015, upon completion of the standard procedures (entrance visa processing (…)) a part of which is currently being completed (…)*". The Respondent also wrote that the instalments of the signing-on fee should be postponed to the followings dates: 2 February 2016, 1 May 2016 and 2 July 2016, since the parties "*agreed upon fixing a different date for contract entering into power".* Furthermore, the Respondent informed the Claimant that it could not purchase the air ticket before the employment contract has entered into force. Finally, the Respondent offered two alternatives to the player: refusing the *"conclusion of the employment contract with the club without payment of any compensation (…)"*, since the Football Union of Country D had not yet released the Respondent from the registration ban, or agreeing that the contract would be valid only on the condition precedent that the Respondent would be released of "*the ban for registration of the new players from Club C no later than from 10 February 2016."*

9. On 11 December 2015, the Claimant sent a copy of his passport to the Respondent by email and, on 14 December 2015, he reminded the Respondent that a valid and binding employment contract had been concluded between the parties. The Claimant further insisted that it was the responsibility of the Respondent to deal with the administrative procedures for the visa and to provide him with an air ticket. Furthermore, the Claimant highlighted that he refused the two alternatives proposed by the Respondent, *i.e.* releasing him for free or amending the contract with a condition precedent. Finally, the Claimant asked the Respondent to send him a draft of the standard form employment contract of the Football Union of Country D "*reflecting the parties' agreement under the* [labour document] *in conjunction with the offer"* by no later than 18 December 2015, otherwise he would assume that the Respondent wishes to terminate the contract without just cause and he would request the payment of EUR 1,664,828 as compensation.

10. On 17 December 2015, the Respondent replied by maintaining its former position regarding the air ticket and the instalments of the signing-on fee, referring to the labour document and stating that *"Taking into account that, according to the letter*

d/d 01 September 2015, read and accepted by Player A, the employment contract will come into force only on 01 January 2016, …". The Respondent also referred to the proposal to include the condition precedent in the new employment contract. The Claimant submitted an annexed unsigned draft of contract for the period as from 1 January 2016 until 31 May 2018, which does not include said condition precedent, and 2 additional agreements.

11. On 24 December 2015, the Claimant replied to the Respondent that he accepts the proposed draft with 2 *"minor changes"* regarding the salary, *i.e.* that it should be net, and the last instalment of the signing-on fee, *i.e.* that it was due on 30 June 2016 instead of 2 July 2016. Thus, the Claimant allegedly sent an unsigned new draft contract and additional agreements to the Respondent with some corrections for signature, and insisted on his refusal to include any condition precedent. Finally, the Claimant raised that he would join the Respondent as soon as the latter would return him the signed contract, a work permit and a flight ticket.

12. On 30 December 2015, the Respondent sent the Claimant an invitation to join the club in order to allow the Claimant to ask for *"usual work visa for a period from 01 January 2016 till 31 May 2018"* and it asked the Claimant to provide his postal address where to send the original invitation. The Respondent further asked the Claimant to arrive on 8 January 2016 in Country D. The Respondent confirmed that the parties are bound by the contract *"… (as revised on 31.08.2015 in conjunction with the offer dd. 01.09.2015), which had been accepted by the player on 18 September and became obligatory for the latter starting from the date mentioned above*." and that *"… the binding contract is coming into effect on 01 January 2016 unconditionally, …"* The Respondent also confirmed that it agreed with the Claimant's amendments relating to the salary and the signing-on fee, and disagreed with some other corrections apparently made by the Claimant and submitted a new draft of contract and 2 additional agreements (hereinafter: *addenda*). Finally, the Respondent explained that it would sign the contract as soon as the Claimant would join the club.

13. According to the new drafts of the contract and the 2 addenda sent by the Respondent to the Claimant on 30 December 2015, the contractual relation would run as from 1 January 2016 until 31 May 2018 and the Claimant was entitled to *inter alia* EUR 45,977 per month for the period as of 1 January 2016 until 30 June 2016 and to EUR 51,724 per month as from 1 July 2016 until 31 May 2018. In addition, the Claimant was entitled to a sign-on fee of EUR 344,828 in three instalments due on 2 February 2016, 1 May 2016 and 30 June 2016.

14. On 3 January 2016, the Claimant wrote an email to the Respondent, claiming that he was not able to apply for a visa before 11 January 2016, since the invitation had been sent by the Respondent on 30 December 2015 only and since the Embassy of Country D, closed until 10 January 2016, required the original invitation, which the Claimant

did not receive in spite of the Respondent being in possession of his lawyer's office address.

15. On 4 January 2016, the Respondent offered the Claimant to join the team only on 14 January 2016, in Country F, for a training camp. The Respondent explained that during this training camp, the Claimant would be able to obtain his visa on the account of the Respondent and sign the employment contract.

16. On 6 January 2016, the Claimant informed the Respondent in writing that he would arrive in Country F on 14 January 2016. He further confirmed that he fully accepted the contents of the contract and addenda the Respondent sent him on 30 December 2015. He also agreed with the Respondent's proposal to complete the application process for his visa in Country F. Moreover, the Claimant requested the Respondent to confirm its ability to register new players in relation to an alleged new transfer ban imposed on the Respondent.

17. On 11 January 2016, the Respondent sent the Claimant an electronic flight ticket City G/City H (Country F) dated 14 January 2016.

18. On 18 January 2016, apparently after a meeting with the Respondent, the Claimant sent a default notice to the Respondent, offering his services and requesting the signature of the contract by the Respondent, as well as his registration with the Respondent and a working permit, by no later than 19 January 2016; otherwise, he would consider that the contract had been terminated by the Respondent without just cause. The Claimant also indicated that the Respondent allegedly told him that it was not interested in his services any more.

19. On 19 January 2016, the Claimant informed the Respondent in writing that he considers that the Respondent terminated the contract without just cause on 19 January 2016, since it did not reply to his letter.

20. On 21 March 2016, the Claimant lodged a claim in front of FIFA against the Respondent, requesting to be awarded the total amount of EUR 1,810,342 corresponding to the residual value of the contract, which was detailed as follows:
    - EUR 344,828 relating to the sign-on-fee;
    - 6 months x EUR 45,977 corresponding to the salaries due from 1 January 2016 to 30 June 2016;
    - 23 months x EUR 51,724 corresponding to the salaries due from 1 July 2016 to 31 May 2018;
    - 5% of interest *p.a.* on the aforementioned amounts as from 20 January 2016 until the date of effective payment;
    - a registration ban on the Respondent for two consecutive transfer periods.

21. In his argumentation, the Claimant held that the parties were contractually bound as from 1 January 2016 until 31 May 2018 through the above-mentioned exchange of correspondence and documents between the parties.

22. In addition, according to the Claimant, during a meeting with the Respondent on 18 January 2016, after he had joined the Respondent in Country F, he was informed that it was not interested in his services anymore, allegedly due to a *"foreign players quota"*. Furthermore, the Respondent had not reacted to his notice of 18 January 2016.

23. Therefore, the Claimant claims that the Respondent is liable for breach of contract without just cause on 19 January 2016.

24. On 26 April 2016, the Respondent's submission was sent to and received, *i.e.* after the time limit set to reply had expired.

25. On 24 March 2016, the Claimant signed a contract with the Club of Country J, Club K, valid as from the date of signature until 30 June 2017, in accordance with which the Claimant is entitled to a fix remuneration of 134,000 as from 24 March 2016 until and including June 2017.

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 matter at hand. In this respect, it took note that the present matter was submitted to FIFA on 21 March 2016. Consequently, the 2015 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) are applicable to the matter at hand (cf. art. 21 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 and par. 2 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2016) 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 Player of Country B and a Club of Country D.

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 2016) and considering that the present claim was lodged on 21 March 2016, the 2015

edition of said regulations (hereinafter: *the 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 on file. 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. Furthermore, the Chamber recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in the Transfer Matching System (TMS).

5. In continuation, the members of the Chamber started by acknowledging that, according to the Claimant, the parties were contractually bound by an employment contract valid as of 1 January 2016 until 31 May 2018. Further, the Chamber took note of the Claimant's allegations that, despite a default notice sent by the Claimant on 18 January 2016, the Respondent did not provide him with a signed copy of the employment contract and a working permit and did not register him with the club within the time limit set in his default notice, *i.e.* 19 January 2016. Therefore, the Claimant raised that the Respondent is liable for the termination of the contract without just cause, of which he notified the Respondent on 19 January 2016, and that, consequently, the Respondent shall be liable to pay compensation for breach of contract.

6. Subsequently, the DRC observed that the Respondent, in spite of having been invited to do so, had, for its part, failed to present its response to the claim of the Claimant within the relevant time limit set by FIFA, *i.e.* 25 April 2016. As a result, bearing in mind the Chamber's jurisprudence in this regard and in application of art. 9 par. 3 of the Procedural Rules, the Chamber decided not to take into account the reply of the Respondent and established that, in accordance with the aforementioned provision, it shall take a decision on the basis of those documents on file that were provided prior to the deadline set by FIFA, *in casu*, on the statements and documents presented by the Claimant.

7. In continuation, the members of the Chamber stressed that given the facts of the matter at hand, the Chamber first and foremost had to focus its attention on the question as to whether a legally binding employment contract had been concluded by and between the Claimant and the Respondent.

8. In this regard, 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 the said principle in the present matter led the members of the Dispute Resolution Chamber to conclude that it was up to the Claimant to prove that the contract on the basis of which he claims compensation for breach of contract from the Respondent, indeed was a valid employment contract binding its parties.

9. Having stated the above, the Dispute Resolution Chamber recalled that the Claimant maintained that the parties were contractually bound as from of 1 January 2016 until 31 May 2018 through the above-mentioned exchange of correspondence and documents between the parties. The Claimant had submitted a series of documents in support of his claim which were examined by the members of the Chamber.

10. In this regard, the Chamber referred to the extensive exchange of correspondence between the Claimant and the Respondent and, in particular, to the Respondent's correspondence dated 30 December 2015 and its annexes addressed to the Claimant, in accordance with which the Respondent confirmed that the parties were contractually bound as of 1 January 2016. In this letter, the Respondent also explained that it would sign the contract as soon as the Claimant would join the club and it sent the Claimant an invitation to join the Respondent in order to allow the player to ask for "*usual work visa for a period from 01 January 2016 till 31 May 2018*". Consequently, the Chamber concluded that this document substantiates the Claimant's allegation that the Respondent considered that there was a valid contract binding the parties as of 1 January 2016.

11. In continuation, the Chamber recalled that in order for an employment contract to be considered as valid and binding, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship, the remuneration. After a careful study of the documents presented by the Claimant, the Chamber concluded that all such essential elements are included in the contract and addenda sent by the Respondent to the Claimant on 30 December 2015 following their prior exchange of correspondence.

12. Having established the above, the DRC took into account that, on 6 January 2016, in the parties' further exchange of correspondence, the Claimant confirmed his full acceptance of the contents of the contract and the addenda the Respondent sent him on 30 December 2015.

13. In respect of the foregoing, the members of the Chamber decided that the documents presented by the Claimant, in particular those referred to in numbers II./10 to II./12 above, established beyond doubt that the Respondent and the Claimant had entered into an employment contract valid as of 1 January 2016 until 31 May 2018 in accordance with the terms set out in the documents annexed to the Respondent's

correspondence of 30 December 2015 (hereinafter: *employment contract*) (cf. point I./13. above).

14. Having established the aforementioned, the Chamber deemed that the underlying issue in this dispute was to determine as to whether the Respondent was to be held liable for termination of the employment contract without just cause, as alleged by the Claimant. The DRC also underlined that, subsequently and in the affirmative, it would be necessary to determine the consequences of any such termination.

15. In this regard, the Chamber recalled that after the Claimant had joined the club at a training camp on 14 January 2016 following the exchange of correspondence between the parties on 4 and 6 January 2016, the Claimant sent a default notice to the Respondent, on 18 January 2016, giving the latter a deadline of only one day to register him with the club and to provide him with a visa as well as a signed copy of the employment contract. Subsequently, the DRC took note that on the day of the time limit set by the Claimant, *i.e.* on 19 January 2016, the Claimant informed the Respondent in writing that he considered that the Respondent terminated the contract without just cause, since it did not reply to his letter.

16. In addition, the DRC took note that according to the information contained in the Transfer Matching System (TMS) the registration period in Country D was only set to open on 27 January 2016 and would remain open until 26 February 2016. Consequently, the members of the Chamber concluded that the Respondent did not have the opportunity to register the Claimant before 27 January 2016.

17. In view of the foregoing, in particular given the fact that the relevant Registration Period of Country D had not yet opened and that the employment contract only had commenced on 1 January 2016, whereas the Claimant informed the Respondent as early as on 19 January 2016, after having given the Respondent one day only to remedy the alleged breach, of the termination of the employment contract without just cause by the Respondent, the members of the Chamber concurred that the Claimant did not wait a sufficient amount of time before terminating the contract on 19 January 2016.

18. On account of the above, the members of the Chamber concluded that the Claimant's reasoning could not be upheld and decided that the Respondent is not to be held liable for the early termination of the employment contract without just cause as claimed by the Claimant.

19. In addition and as a consequence of the above, the DRC decided to reject the Claimant's claim for compensation for breach of contract against the Respondent.

20. The members of the Chamber, however, took into consideration that it is uncontested that the Claimant did put himself at the disposal of the Respondent as of 1 January 2016 until 19 January 2016. In this respect, the DRC took into account that the Claimant was not able to join the Respondent before 14 January 2016 because of the delay in the completion by the Respondent of administrative formalities. Therefore, the Chamber considered that the Claimant is entitled to be remunerated for the period of time running from 1 January 2016 to 19 January 2016.

21. On account of the above, the DRC concluded that the Claimant is entitled to receive the portion of the salary for the period running from 1 January 2016 until 19 January 2016, namely EUR 28,179.

22. Consequently and taking into account all the above-mentioned facts and considerations, the Chamber decided that the Respondent is liable to pay to the Claimant the amount of EUR 28,179.

23. In addition, taking into consideration the Claimant's claim, the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* on the amount of EUR 28,179 as of 20 January 2016 until the date of effective payment.

24. The DRC concluded its deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

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III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player A, is partially accepted.

2. The Respondent, Club C, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of EUR 28,179 plus 5% interest *p.a.* as of 20 January 2016 until the date of effective payment.

3. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

4. Any further claim lodged by the Claimant is rejected.

5. The Claimant is directed to inform the Respondent 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.

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Note relating to the motivated decision (legal remedy):

According to article 58 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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Avenue de Beaumont 2
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For the Dispute Resolution Chamber:

Marco Villiger
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Encl: CAS directives