

# Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 9 February 2017,

in the following composition:

**Thomas Grimm (Switzerland)**, Deputy Chairman  
**Eirik Monsen (Norway)**, member  
**Joaquim Evangelista (Portugal)**, member  
**Taku Nomiya (Japan)**, member  
**Todd Durbin (USA)**, 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 15 January 2015, the Player of Country B, Player A (hereinafter: *player* or *Claimant*), and the Club of Country D, Club C (hereinafter: *club* or *Respondent*), signed an employment contract (hereinafter: *contract*) valid as of 15 January 2015 until 30 September 2015.
2. According to the contract, the club undertook to pay the player, *inter alia*, a monthly salary of USD 6,000 payable "*from day 5 today 10 of the following month*".
3. Furthermore, the contract contains the following clause: "*The club shall provide the return for player in season 2015 two tickets Country B-Country D-Country B*".
4. Moreover, art. 3.5 of the contract reads as follows: "*The club has the right to terminate the contract early if the player does not have good performance or violates the rules of the Football Federation of Country D, regulations of Club C, Club C [the club] will pay compensation 01 month salary for player*".
5. On 28 April 2015, the club terminated the contract with the player in writing, arguing that he "*cannot meet the professional requirements*" and that he "*has not usually played in official football games and frequently on the bench of substitutes*".
6. On 5 May 2015, the player sent a letter to the club requesting to revoke its decision to terminate the contract.
7. On 3 November 2016, the player lodged a claim with FIFA against the club for breach of contract without just cause and requested payment of the following monies:
  - EUR 2,187.72 corresponding to flight tickets;
  - USD 30,000 as compensation for breach of contract.In addition, the player requested interest of 5% *p.a.* as from the respective due dates.
8. In his arguments, the player held that the club paid all the salaries up to the termination, but failed to reimburse him for two flight tickets.
9. Furthermore, the player argued that the club had no just cause to terminate the contract and claimed compensation for breach of contract in the amount of USD 30,000 corresponding to the residual value of the contract, *i.e.* the salaries as of May 2015 until September 2015.

10. Moreover, the player pointed out that the club had not replied to his letter dated 5 May 2015.
11. Despite having been invited to do so, the club has not responded to the player's claim.
12. The player has not signed a new employment contract during the relevant period of time following the termination of the contract.

## 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 3 November 2016. Consequently, the 2015 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) is 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 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 3 November 2016, the 2016 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. First of all, the members of the Chamber acknowledged that, on 15 January 2015, the Claimant and the Respondent had concluded an employment contract valid as from 15 January 2015 until 30 September 2015.
6. In continuation, the members of the Chamber noted that the Claimant lodged a claim against the Respondent maintaining *inter alia* that the club terminated the employment contract without just cause on 28 April 2015. Consequently, the Claimant asks to be awarded *inter alia* compensation for breach of the employment contract without just cause.
7. Subsequently, the DRC took into account that the Respondent failed to present its response to the claim of the Claimant, in spite of having been invited to do so. By not presenting its position to the claim, the Chamber was of the opinion that the Respondent renounced its right of defence and, thus, accepted the allegations of the Claimant.
8. Furthermore, as a consequence of the aforementioned consideration, the DRC concurred that in accordance with art. 9 par. 3 of the Procedural Rules, it shall take a decision upon the basis of the documentation on file.
9. First and foremost, the Chamber took into account the Respondent's notice dated 28 April 2015, addressed to the Claimant, by means of which the Respondent terminated the contract due to the Claimant's alleged failure to meet the Respondent's professional requirements. The Chamber further noted that the Claimant had protested in writing against his dismissal by the Respondent.
10. Having established that the Respondent terminated the employment contract on 28 April 2015, the Chamber turned its attention to the question as to whether the contract had been terminated by the Respondent with or without just cause.
11. In respect of the reason invoked by the Respondent in the relevant notice of termination, the Chamber wished to emphasise that in accordance with the Chamber's longstanding jurisprudence, alleged low performance of a player cannot be considered a valid reason to unilaterally terminate an employment contract. Therefore, contractual provisions entitling a club to terminate a contract for this specific reason shall be disregarded.
12. In this context, and in the absence of any other reason which could justify the termination of the contract by the Respondent, the Chamber concluded that the Respondent had no just cause to unilaterally terminate the contract on 28

April 2015 and, therefore, decided that the Respondent is to be held liable for the early termination of the employment contract without just cause.

13. In continuation, prior to establishing the consequences of the termination of the employment contract without just cause by the Respondent in accordance with art. 17 par. 1 of the Regulations, the Chamber held that it had to address the issue of any unpaid remuneration at the moment when the Respondent terminated the employment relation.
14. In this regard, the members of the Chamber took into account that the Claimant held having received his salaries up to the termination of the contract on 28 April 2015, but argued that the Respondent failed to reimburse two flight tickets in the total amount of EUR 2,187.72.
15. Furthermore, the DRC established that the Claimant, in accordance with the contract, was entitled to receive two return flight tickets from Country B to Country D.
16. Turning its attention to the receipts relating to the flight tickets submitted by the Claimant, the Chamber noted that for one of the tickets the flight route was not in accordance with the contractual provision. The DRC concluded that the claim for reimbursement of said ticket in the amount of EUR 1,037.72 must therefore be rejected.
17. In continuation, the members of the Chamber decided that the Claimant is entitled to receive reimbursement of the amount of EUR 1,150 on the basis of the employment contract and the receipt provided for the second flight ticket.
18. Consequently, on account of the above and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Respondent is liable to pay to the Claimant the amount of EUR 1,150 in connection with the remuneration due to the Claimant in accordance with the employment contract until its early termination.
19. 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 1,150 as of 28 April 2015.
20. Having established the above, the Chamber turned its attention to the consequences of the termination of the employment contract by the Respondent without just cause on 28 April 2015.

21. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive compensation for breach of contract from the Respondent.
22. In continuation, the Chamber focused its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of the Chamber firstly 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 Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
13. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent contract contains a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. The members of the Chamber recalled that according to art. 3.5 of the contract, *"The club has the right to terminate the contract early if the player does not have good performance or violates the rules of the Football Federation of Country D, regulations of Club C, Club C [the club] will pay compensation 01 month salary for player"*. In addition, the Chamber highlighted that this clause is the only contractual provision potentially dealing with the amount of compensation in the event of breach of contract by either of the parties.
14. In continuation, the members of the Chamber agreed that said compensation clause is to the benefit of the club only, *i.e.* it is not reciprocal as it does not grant the same rights to the player, and that, therefore, said clause cannot be taken into consideration in the determination of the amount of compensation.
15. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body.
16. The members of the Chamber then turned their attention to the remuneration and other benefits due to the Claimant under the existing contract and/or the

new contract, which criterion 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 the new contract, if any, in the calculation of the amount of compensation.

17. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract as from the date of termination without just cause by the Respondent, *i.e.* 28 April 2015, until the original date of expiry, *i.e.* 30 September 2015, and concluded that the Claimant would have received remuneration in the total amount of USD 30,000 had the contract been executed until its ordinary expiry date. Consequently, the Chamber concluded that the amount of USD 30,000 serves as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.
18. In continuation, the Chamber verified as to whether the Claimant had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
19. In this regard, the members of the Chamber noted that the Claimant had not signed any new employment contract within the period of time between the termination of the contract and its original date of expiry and, thus, had not been able to mitigate damages.
20. Consequently, on account of all of the above-mentioned considerations, the Chamber decided that the Respondent must pay the amount of USD 30,000 to the Claimant as compensation for breach of contract.
21. In addition, taking into account the Claimant's request, the Chamber decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the amount of compensation as of the date on which the claim was lodged, *i.e.* 3 November 2016, until the date of effective payment.
22. The members of the Chamber concluded their deliberations by rejecting any further claim of the Claimant.

### 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, outstanding remuneration in the amount of EUR 1,150 plus 5% interest *p.a.* as from 28 April 2015 until the date of effective payment.
3. The Respondent has to pay to the Claimant, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 30,000 plus 5% interest *p.a.* as from 3 November 2016 until the date of effective payment.
4. In the event that the aforementioned sums are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
5. Any further claim lodged by the Claimant is rejected.

6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are 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:

Court of Arbitration for Sport  
Avenue de Beaumont 2  
1012 Lausanne  
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For the Dispute Resolution Chamber:

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Omar Ongaro  
Football Regulatory Director

Encl: CAS directives