Decision of the
Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 17 March 2015,

by **Theo van Seggelen** (Netherlands), DRC judge,

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 6 January 2012 the player from country B, Player A (hereinafter: *the Claimant*), and the club from country D, Club C (hereinafter: *the Respondent*), concluded an employment contract (hereinafter: *the contract*) valid as from the date of signature until 1 June 2015.

2. On 28 February 2014, both above-mentioned parties signed a termination agreement (hereinafter: *the termination agreement*) by means of which they agreed to terminate the contract by mutual consent and the Respondent recognized that it owed the Claimant the amounts of EUR 55,000; USD 38,000 and 369,665.

3. According to clause 4 of the termination agreement, the Respondent committed itself to pay the above-mentioned outstanding amounts to the Claimant in the following way:
   - By 6 March 2014 -> EUR 27,500.
   - By 15 April 2014 -> EUR 13,750;
     -> USD 6,000 and
     -> 100,000.
   - By 15 May 2014 -> EUR 13,750;
     -> USD 8,000 and
     -> 200,000.
   - By 15 June 2014 -> USD 24,000 and
     -> 69,665.

4. Clause 5 of the termination agreement stipulates that "*if* [the Respondent] *does not pay the entire debt before 15.06.2014, then* [the Claimant] *has the right to accrue at the rate of 5% per annum on the remaining amount for each day of delay*".

5. On 20 August 2014, the Claimant lodged a claim against the Respondent in front of FIFA, requesting the total amount of EUR 39,146.71 "*plus 5% interest from the date it became due*".

6. According to the Claimant, the Respondent should have paid him, in accordance with the termination agreement, the total amount of EUR 104,745.82. However, the Claimant alleged that by the time he lodged the claim, the Respondent had only paid the total amount of EUR 65,599.11 according to the following breakdown:

- EUR 22,491.83 on 6 March 2014;
- EUR 6,835 on 6 March 2014;
- EUR 4,477.35 on 23 April 2014;
- EUR 15,969.60 on 2 June 2014;
- EUR 15,825.33 on 2 July 2014.

7. The Claimant sent two default notices to the Respondent on 3 and 4 July 2014 giving the Respondent a deadline of seven days to comply with its obligations.

8. On 8 July 2014, the General Director of the Respondent replied to the Claimant and explained that the Respondent had been in a difficult financial situation but that it would comply with its payment obligations before the end of July 2014. In this respect, the Claimant accepted such proposal and gave the Respondent a deadline until 15 August 2014 to make the relevant payments, however, according to the Claimant, the Respondent did not pay the outstanding amounts.

9. On 1 September 2014, the Claimant informed FIFA about two more payments made by the Respondent on 21 and 22 August 2014 in the amounts of EUR 33,271.28 and EUR 166.39 respectively.

10. The Respondent replied to the claim acknowledging that it could not comply with the obligations established in the termination agreement due to financial difficulties and that it "*was permanently informing either* [the Claimant] *or his attorneys via e-mail wherein fulfilling its obligations* partly". According to the Respondent, due to the impossibility of complying with its initial obligations and after "*productive negotiations*", on 18 August 2014, it reached a further agreement (hereinafter: *the alleged settlement agreement*) with the Claimant which, according to the Respondent, was signed by the parties by e-mail and in accordance with which, the Respondent would pay the Claimant the amount of USD 45,000 as a final amount before 21 August 2014.

11. In this regard, the Respondent deemed that it had fully complied with its obligations towards the Claimant by means of the payments made on 21 and 22 August 2014 and considered that the Claimant had no grounds to claim any further amount.

12. The Claimant, in his replica, challenged the authenticity of the alleged settlement agreement and declared that he never signed such document. In this regard, the Claimant pointed out that both the employment contract and the termination agreement were signed and stamped in every page while the alleged settlement agreement was only apparently signed on one page which, besides, was an additional page separate from the contents.

13. Furthermore, the Claimant alleged that, should it be true that the alleged settlement agreement was signed by the parties via e-mail, the Respondent could have easily proved it by providing the e-mails exchange in this regard.

14. On this basis, the Claimant denied and rejected every argument put forward by the Respondent.

15. In its duplica, the Respondent rejected the Claimant's allegation of forgery of the alleged settlement agreement that it had provided, stressing that the whole process of negotiation and signing of the alleged settlement agreement was made with the Claimant's agent from country D, Mr. X. However and despite having been requested by FIFA to provide the original employment contract, the Respondent did not send it.

16. According to the Respondent, it negotiated the alleged settlement agreement with Mr. X who represented as well other players from the team with which it had financial disputes. The Respondent explained that as a result of the negotiations held with the aforementioned agent, it could settle all the disputes, including the one at stake, by making a payment in the amount of USD 45,000 to each player.

17. The club stated that with the Claimant in particular, the negotiations "*were held online*", then the Claimant sent the alleged settlement agreement already signed to the agent via e-mail and the latter forwarded it to the Respondent. In support of its assertions, the Respondent provided a statement signed by Mr. X, maintaining that (i) he carried out the negotiations between the Claimant and the Respondent and that the Claimant signed the alleged settlement agreement via e-mail "*probably 23-25 August 2014*", and (ii) the other players from the Respondent that he represented also signed the same settlement agreement. Furthermore, the Respondent provided a screen shot of an undated SMS apparently sent by the Claimant to the alleged agent from country D saying "*If they pay tomorrow this 45 thousand I will sign the paper*".

18. Moreover, the Respondent stated that if the alleged settlement agreement had been false, there is no explanation as to why did it pay the amount of USD 45,000 to the Claimant in August 2014. In addition, the Respondent stressed that the Claimant had not proven anything and that, on the contrary, it had sufficiently evidenced the settlement agreement in the amount of USD 45,000 by means of the screen shot provided by the agent from country D. Finally, the Respondent considered that the DRC cannot decide on the authenticity of the alleged settlement agreement's signatures, as it should be the civil or criminal courts at national level.

19. In view of the above, the Respondent considered that the Claimant was "*misled by third parties*" and that the Respondent itself complied with its final obligations after all, although acknowledging that it had to go through financial difficulties and stressing that it never refused its debts.

II. Considerations of the DRC judge

1. First of all, the DRC judge analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was submitted to FIFA on 20 August 2014. Consequently, the 2014 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the Procedural Rules).

2. Subsequently, the DRC judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2015) he is competent to decide on the present litigation, which concerns an employment-related dispute with an international dimension between a player from country B and an club from country D.

3. In particular, and in accordance with art. 24 par. 2 lit. i) of the Regulations on the Status and Transfer of Players, the DRC judge confirmed that he may adjudicate in the present dispute which value does not exceed CHF 100,000.

4. In continuation, the DRC judge analyzed which edition of the FIFA Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, he referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2014 and 2015), and, on the other hand, to the fact that the present claim was lodged in front of FIFA on 20 August 2014. The DRC judge concluded that the 2014 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*), is applicable to the matter at hand as to the substance.

5. The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. In doing so, he started by acknowledging the abovementioned facts of the case as well as the documentation contained in the file. However, the DRC judge emphasised that in the following considerations he will refer only to the facts,

arguments and documentary evidence which he considered pertinent for the assessment of the matter at hand.

6. In this respect, the DRC judge acknowledged that, on 6 January 2012, the parties had concluded an employment contract valid until 1 June 2015. Moreover, the DRC judge took note that the Claimant and the Respondent put an end to the employment contract by mutual consent on 28 February 2014, by means of a termination agreement according to which the Respondent would pay the Claimant the amounts of EUR 55,000; USD 38,000 and 369,665 in several instalments.

7. Additionally, the DRC judge took note that it was established by the Claimant and uncontested by the Respondent, that the total amount to which the Claimant was entitled to in accordance with the termination agreement, was EUR 104,745.82.

8. The DRC judge then turned to the complaint of the Claimant, who maintained that the Respondent had failed to pay him the amount of EUR 39,146.71 from the due amount established in the termination agreement.

9. Subsequently, the DRC judge noted that the Respondent, in its statement of defence, alleged having signed a settlement agreement with the Claimant on 18 August 2014, in accordance with which the Respondent would pay the Claimant the sum of USD 45,000 as a final settlement amount, before 21 August 2014.

10. The DRC judge further noted that, in his replica, the Claimant denied ever having signed a settlement agreement for a final amount of USD 45,000, the document in this regard provided by the Respondent being a counterfeit.

11. In continuation, the DRC judge noted that, while not providing FIFA with the original version of the alleged settlement agreement, the Respondent asserted having negotiated such agreement with an alleged agent acting in representation of the Claimant, *i.e.* Mr. X, who apparently sent the alleged settlement agreement signed by the Claimant, by e-mail to the Respondent.

12. Having established the aforementioned, the DRC judge pointed out that the core document in the present dispute, considering the claim of the Claimant and the allegations of the Respondent, is the settlement agreement apparently concluded between the Respondent and the Claimant, via the alleged representative of the latter, Mr. X, on 18 August 2014, by means of which the Respondent would settle the outstanding amounts owed to the Claimant, by paying a final amount of USD 45,000 before 21 August 2014. In

other words, the DRC judge considered that the underlying issue in the present dispute consists of establishing whether the parties settled the dispute at stake with the signature of the aforementioned agreement and, consequently, if any amounts are still to be considered as outstanding.

13. At this stage, the DRC judge 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 signature or document, and that such affairs fall into the jurisdiction of the competent national criminal authority.

14. Subsequently, the DRC judge 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 DRC judge to conclude that it was up to the Respondent to prove the existence and/or validity of the settlement agreement on the basis of which all outstanding amounts due to the Claimant had been settled.

15. Having stated the above, the DRC judge recalled that the Claimant maintained that he never signed the alleged settlement agreement with the Respondent and upheld that his signature contained on the copy of the agreement remitted by the Respondent was forged. What is more, the Respondent was unable to provide the relevant alleged settlement agreement in its original form signed by the hand of the parties. On account of these considerations, the DRC judge held that the fact the Respondent had only submitted a copy of the disputed agreement was insufficient to establish the existence of the alleged settlement agreement.

16. In continuation, the DRC judge turned his attention to the further arguments put forward by the Respondent and, firstly, wished to stress that the Respondent did not provide evidence showing that, as alleged, Mr. X sent to the Respondent, via e-mail, the alleged settlement agreement apparently signed by the Claimant. Thus, the DRC judge decided that the allegation of the Respondent in this respect should be disregarded.

17. In addition, the DRC judge pointed to the declaration of Mr. X provided by the Respondent and highlighted the inconsistency of its contents when he declared that the alleged settlement agreement was signed "*probably 23-25 August 2014*", while the Respondent asserted that it was signed on 18 August 2014 and, what is more, the due date indicated therein was 21 August 2014. In addition, while referring one more time to the contents of art. 12 par. 3 of the Procedural Rules, the DRC judge established that the Respondent was unable

to prove that the alleged agent, Mr. X, indeed represented the Claimant and that he carried out negotiations to settle the relevant outstanding amounts on the Claimant's behalf.

18. In view of the foregoing, the DRC judge concluded that the allegations and documents presented by the Respondent did not prove beyond doubt that the Claimant and the Respondent had validly signed a settlement agreement according to which, the Respondent would not have any further payment obligation towards the Claimant.

19. Taking into account the above-mentioned considerations, the DRC judge established that the Respondent did not comply in full with its financial obligations as per the termination agreement signed on 28 February 2014 and that, therefore, the Claimant was entitled to certain outstanding amounts. In calculating the outstanding amounts owed to the Claimant, the DRC judge took into consideration the following points: (i) the Claimant was entitled to EUR 104,745.82 as per the termination agreement; (ii) it was uncontested that the Respondent, until 20 August 2014, had only paid the amount of EUR 65,599.11; (iii) the Claimant acknowledged to have received from the Respondent the amounts of EUR 33,271.28 and EUR 166.39 during the course of the proceedings in front of FIFA, on 21 and 22 August 2014, respectively.

20. Consequently, the DRC judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant the total amount of EUR 5,709.04.

21. Moreover, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber, the DRC judge decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the amount of EUR 5,709.04 as from 16 June 2014.

22. The DRC judge concluded his deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

III. Decision of the DRC judge

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 5,709.04 plus 5% interest *p.a.* on said amount as from 16 June 2014 until the date of effective payment.

3. If the aforementioned sum plus interest is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA 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 DRC judge of every payment received.

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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:

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Encl. CAS directives