Decision of the

Dispute Resolution Chamber

passed in Zurich, Switzerland, on 18 March 2016,

in the following composition:

Geoff Thompson (England), Chairman
Philippe Piat (France), member
John Bramhall (England), member
Theodore Giannikos (Greece), member
Zola Majavu (South Africa), 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 28 December 2014, the player from country B, Player A (hereinafter: *the player* or *the Claimant*) and the club from country D, Club C (hereinafter: *the club* or *the Respondent*) entered into an employment contract (hereinafter: *the contract*) valid as from its signature date until the end of the 2015-16 sporting season.

2. According to the Transfer Matching System (TMS), the 2015-16 sporting season in country D starts on 30 July 2015 and ends on 20 May 2016.

3. According to art. 4-6 of the contract, the club may grant the player a 10 days leave during the mid-season break.

4. Furthermore, in case of any delay in returning from vacation, the club may sanction the player by imposing a fine of USD 5,000 per day of delay.

5. Moreover, should the player's delay last more than a week, and in addition to the daily penalty, the club is entitled to penalise the player by reducing his annual income by 25%.

6. According to art. 4-10 of the contract, the club may unilaterally terminate the contract should the player be absent from the club more than 10 days.

7. According to art. 7 of the contract, the player is entitled to the following remuneration:

   - USD 133,000 (4,655,000,000) for the sporting season 2014/2015, payable via a down payment of USD 50,000 upon signature of the contract, plus six monthly payments of USD 10,000 each. The remaining amount of USD 23,000 shall be paid to the player at the end of the season "*as guarantee of the player's good performance*."

   - USD 267,000 (i.e. 9,345,000,000) for the sporting season 2015/2016, 20% of which being payable at the end of the relevant sporting season as *"guarantee of the player's good performance"* and the remaining amount being payable via 12 monthly installments of USD 17,800 each.

8. Pursuant to art. 4-7 of the contract, the club shall provide the player and his wife with one round trip flight ticket country D-country B-country D per person.

9. According to the player, the club and his representative signed a second contract (hereinafter: *the alleged second contract*) at the end of the month of December 2014, allegedly stipulating that the club shall pay the player a signing-on fee of USD 20,000 within fifteen days of its signature.

10. On 26 May 2015, by email, the player notified the club of non-payment of three monthly salaries and of organizing the return flights from country B to country D. Furthermore, the player asked the club to inform him of the date on which he had to return to the club.

11. On 30 June 2015, the club terminated the employment contract in writing due to the player's alleged unjustified absence for more than 10 days, invoking art. 4-10 of the contract.

12. The notice of termination further indicated that based on the club's calendar and the information verbally given by the club's manager, the player should have returned to country D to resume training on 18 June 2015 and that in his email, the player had only questioned the club about the issuance of his return flight tickets, whereas it deemed having already issued the flight tickets country D-country B the player is contractually entitled to. In said termination notice, the club asked the player to provide his bank details so as to proceed to pay the player's outstanding remuneration.

13. On 8 December 2015, the player lodged a claim against the club with FIFA, asserting that the club unilaterally terminated the employment contract without just cause.

14. In this context, the player *inter alia* requested that the club be ordered to pay him outstanding remuneration and compensation for breach of contract in the total amount of USD 350,650, plus 5% interest *p.a.*, calculated as follows:

    - Outstanding remuneration in the amount of USD 60,650:

        - USD 20,000 related to the signing-on fee of the alleged second contract, plus interest on said sum, calculated as from the expiry of the fifteenth day following its signature;

        - USD 40,000 corresponding to the player's remuneration for the months of March, April, May and June 2015 (USD 10,000 x 4) in accordance with the employment contract, plus interest, calculated as from the relevant due dates;

        - USD 650 corresponding to the costs the player allegedly incurred to modify the details of the flight tickets country D/country B he and his wife received from the club, plus interest on said amount, calculated as from the month of May 2015.

    - Compensation for breach of contract in the amount of USD 290,000:

- USD 23,000, based on the amount to be paid at the end of the sporting season 2014/2015, plus interest on said sum, calculated as from the termination date;

- USD 213,600, composed of the player's 12 monthly salaries related to the sporting season 2015/2016, plus interest, applied as from the termination date;

- USD 53,400 corresponding to the amount payable at the end of the sporting season 2015/2016, plus interest, calculated as from the termination date;

15. The player further asks that sporting sanctions be imposed upon the club.

16. In support of his claim, the player explained that although he always complied with his contractual obligations, the club stopped paying his remuneration after having remitted his first two monthly salaries.

17. He further stated that his email of 26 May 2015 remained unanswered by the club.

18. In continuation, the player asserted that as he was allowed to leave on vacation at the end of the sporting season 2014/2015 and that the club bought one flight ticket for him and one for his wife, to return to country B. However, according to the player, and as the flight dates were "*incorrect*", the player rescheduled the flight details for himself and his wife, which allegedly cost him USD 650.

19. With respect to the club's reasoning for the termination of the contract as indicated in the notice of termination, the player deemed that the club is acting in bad faith and tries to distort the facts, not only to hide its own unlawful behaviour, but to make the player responsible for the termination of the contract.

20. In this respect, the player insisted that the club never informed him of the date on which he had to return from his vacation, neither via a calendar or verbally, nor following his email of 26 May 2015.

21. More importantly, the player deemed in this regard that instead of acting in the interest of the maintenance of their contractual relationship, the club remained inactive until the ten days deadline stipulated in art. 4-10 had ended and, thereafter, invoked such clause in order to justify the termination of the contract.

22. Additionally, the player maintained that the club violated art. 4-7 of the contract as it only provided him with 2 one-way flight tickets for him and his

wife to travel to country B, and not with two round trip flight tickets. The player stressed that the club admitted this violation as it mentioned in its termination notice that it remitted the tickets "country D/country B" to the player.

23. The player further stressed that in its termination notice, the club admitted that it was in breach of contract in relation to the payment of the player's salaries as from March 2015 until June 2015.

24. Finally, the player held that should it be considered that he acted in breach of contract by not returning to the club on 18 June 2015, *quod non*, the club had to apply art. 4-6 of the contract, which is specifically related to the question of late a return from vacation, and not art. 4-10, which is related to absence without further specification. In this respect, the player stressed that art. 4-6 only provides for the imposition of financial penalties upon the player in case of late return from holidays and does not give the club any grounds for terminating the contract.

25. In spite of having been invited to do so, the club did not present any answer to the claim of the player.

26. On 20 July 2015, the player and the club from country B, Club E signed an employment contract valid as from its signature date until 30 November 2015. According to said contract, the player was entitled to a remuneration of 1,500.

27. On 30 November 2015, the player and the club from country F, Club G signed an employment contract, valid as from 1 December 2015 until 30 November 2016, in accordance with which the player is entitled to receive a signing-on fee of USD 10,000 and a monthly remuneration of USD 18,000.

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 8 December 2015. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2015; hereinafter: *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 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2015) 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 from country B and a club from 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 2015), and considering that the present claim was lodged on 8 December 2015, the 2015 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 documentation available 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. In particular, 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. The members of the Chamber acknowledged that, on 28 December 2014, the Claimant and the Respondent signed an employment contract valid as from 28 December 2014 until the end of the sporting season of country D 2015/2016, i.e. 20 May 2016.

6. The Chamber further observed that the Claimant lodged a claim in front of FIFA against the Respondent seeking payment of the total amount of USD 350,650, asserting that the Respondent had not fulfilled its contractual obligations towards him. More specifically, the Claimant held that in addition to having repeatedly failed to pay him his monthly remuneration, the Respondent terminated the employment contract without just cause and therefore is to be held liable to pay compensation in addition to outstanding remuneration.

7. The Chamber was eager to highlight that the Respondent, for its part, failed to present its response to the claim of the Claimant, in spite of having been invited to do so. Therefore, the Chamber considered that, in this way, the Respondent renounced its right of defence and accepted the allegations of the Claimant.

8. Furthermore, as a consequence of the aforementioned consideration, the Chamber concurred that in accordance with art. 9 par. 3 of the Procedural Rules it shall take a decision upon the basis of the documents already on file,

in other words, upon the statements and documents presented by the Claimant.

9. On account of the above, the Chamber acknowledged that it had to establish as to whether the Respondent terminated the employment contract without just cause on 30 June 2015, as claimed by the Claimant, and, subsequently, in the affirmative, to decide on the consequences thereof.

10. In this respect, the members of the Chamber focussed their attention on the notice of termination dated 30 June 2015, via which the Respondent informed the Claimant of the termination of the employment contract and the reason thereof, i.e. the Claimant's alleged unjustified absence for more than 10 days.

11. The Chamber observed that in his statement of claim, the Claimant held that he was authorised to travel to country B for vacation purposes at the end of the 2014-15 season and that the Respondent had issued a one-way flight ticket on such occasion.

12. The members of the Chamber further took into account that according to the Claimant, the Respondent failed to reply to his email of 26 May 2015 and he was not informed of the date on which he was to return to the club nor was he provided with the required return flight ticket.

13. In this respect, the Chamber took into account that the Respondent had contractually undertaken to provide the Claimant with a round trip flight ticket.

14. Having said that, bearing in mind the considerations under points II./7. and II./8. above, the Chamber concluded that it has remained uncontested that the Claimant had left for holiday purposes with the approval of the Respondent and that the Respondent had not provided the Claimant with the contractual return flight ticket or informed him of the date on which he had to return to the club, not even after the Claimant had asked the Respondent to provide him with such document/information on 26 May 2015.

15. Regardless of the question as to whether the Claimant was supposed to resume training at the club on 18 June 2015, the Chamber was of the firm opinion that the Respondent did, in any case, not have just cause to prematurely terminate the employment contract with the Claimant on 30 June 2015, since the alleged breach could not legitimately be considered as being severe enough to justify the termination of the contract, and that there would have been more lenient measures to be taken (e.g., among others, a suspension or a fine) in order to sanction an alleged unjustified absence as from 18 June 2015. The Chamber stressed that a premature termination of an employment contract can only ever be an *ultima ratio* measure.

16. On account of all of the above, the Chamber decided that, on 30 June 2015, the Respondent terminated the employment contract without just cause.

17. Having established that the Respondent is to be held liable for the early termination of the employment contract without just cause, the Chamber went on to deal with the consequences thereof.

18. Firstly, the members of the Chamber concurred that the Respondent must fulfill its obligations as per employment contract up until the date of termination of the contract in accordance with the general legal principle of "*pacta sunt servanda*".

19. In this respect, the Chamber recalled that it has remained uncontested that the Claimant's monthly remuneration in accordance with the employment contract as from March 2015 until its termination had not yet been paid by the Respondent.

20. Consequently, the Chamber decided that the Respondent is liable to pay to the Claimant the remuneration that was outstanding at the time of the termination, *i.e.* the amount of USD 40,000, consisting of four monthly instalments of USD 10,000 each corresponding to the months of March, April, May and June 2015 under the employment contract.

21. In addition, taking into consideration the Claimant's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the members of the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* on the outstanding amount of USD 40,000, calculated as of the day following the due date of payment of each of the aforesaid monthly instalments of USD 10,000, until the date of effective payment.

22. In continuation, on account of the principle of the burden of proof set out in art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, the members of the DRC unanimously agreed that the Claimant's claims for payment of USD 20,000 on the basis of an alleged second contract and the reimbursement of USD 650 in respect of alleged costs for changes in flight tickets had to be rejected as they were not corroborated by any documentary evidence.

23. Having established the above, the Chamber decided that, taking into consideration art. 17 par. 1 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract.

24. In this context, the Chamber outlined that, in accordance with said provision, 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.

25. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained any clause, 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. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

26. 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.

27. 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.

28. 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 in the calculation of the amount of compensation.

29. In this respect, the Chamber pointed out that as from the termination of the employment contract on 30 June 2015 until the original expiry of the contract, 12 monthly instalments of USD 17,800 each and two payments of USD 23,000 and 53,400, respectively, were payable to the Claimant. Consequently, the Chamber concluded that the residual value of the contract amounts to USD 290,000 and that such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.

30. 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.

31. Following the early termination of the employment contract, the Claimant had found new employment as from 20 July 2015. Indeed, the Claimant signed an employment contract with the club from country B, Club E, valid as from 20 July 2015 until 30 November 2015, in accordance with which he would be remunerated with the monthly amount of 1,500, corresponding approximately to a total of USD 2,224 for the duration of this contract. The Claimant further signed an employment contract with a club from country F, Club G, valid as from 1 December 2015 until 30 November 2016, in accordance with which the Claimant was entitled to a monthly salary of USD 18,000 and a signing-on fee of USD 10,000, i.e. a total of USD 118,000 for the residual period of time until the end of May 2016.

32. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand as well as the Claimant's general obligation to mitigate his damage, the Chamber decided that the Respondent must pay the amount of USD 169,776 to the Claimant as compensation for breach of contract without just case.

33. Furthermore, taking into account the Claimant's petition 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.* 8 December 2015, until the date of effective payment.

34. The Dispute Resolution Chamber 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, outstanding remuneration in the amount of USD 40,000 plus 5% interest *p.a.* until the date of effective payment as follows.

   a. 5% *p.a.* as of 1 April 2015 on the amount of USD 10,000;
   b. 5% *p.a.* as of 1 May 2105 on the amount of USD 10,000;
   c. 5% *p.a.* as of 1 June 2015 on the amount of USD 10,000;
   d. 5% p.a. as of 1 July 2015 on the amount of USD 10,000.

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 169,776 plus 5% interest *p.a.* on said amount as from 8 December 2015 until the date of effective payment.

4. In the event that the aforementioned sums plus interest are 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.

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 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
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For the Dispute Resolution Chamber:

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Marco Villiger
Deputy Secretary General

Encl. CAS directives