Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 23 March 2017,

in the following composition:

Thomas Grimm (Switzerland), Deputy Chairman
Theo van Seggelen (Netherlands), member
Carlos González Puche (Colombia), member
Alejandro Marón (Argentina), 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
arisen between the parties

I. Facts of the case

1. On "*08/07/2014*", the Player of Country B, Player A (hereinafter: *the Claimant*), and the player's agent, Agent E (hereinafter: *the agent*), signed a "*representation contract*" (hereinafter: *the representation contract*), valid from "*08/07/2014*" until "*08/07/2016*", which established that "*the player appoints the agent to provide the following services: negotiate and signing any appropriate contract with any interest club regarding to signing and renewing contract, assisting him to any other issue related to his football carrier.*"

2. On "*14/7/2014*", the Club of Country D, Club C (hereinafter: *the Respondent*) and the agent allegedly signed an "*agreement*" (hereinafter: *the document*) valid "*for one football season (2014/2015*)", which consists of two pages, the signature page of which has no letterhead and contains the alleged signatures of the agent as well as of the club president, and the first page of which is made out on the agent's letterhead and bears the date of 14 July 2014 and reads that it is an agreement between the agent and the Respondent *"regarding to* [his] *Player of Country B, Player A…"*).

3. Furthermore, the document stipulates that: "*This agreement is binding, final and irrevocable to all parties after the club's president signature*".

4. According to the document, the Respondent undertook to pay the Claimant *inter alia* USD 200,000 net, payable in 10 monthly salaries of USD 20,000 each.

5. On 4 August 2015, the Claimant lodged a claim in front of FIFA against the Respondent, alleging that the Respondent and himself were contractually bound by "*the agreement*" allegedly concluded between the Respondent and the agent and that the Respondent unilaterally terminated "*the agreement*", which is why he requested to be awarded the total amount of USD 140,000, corresponding to seven monthly salaries, from July 2014 to January 2015.

6. In his arguments, the Claimant claimed that the agent contacted him on 6 July 2014 with a proposal to play with the Respondent. The Claimant further claimed that on 6 August 2014, he flew to City F with a flight ticket allegedly booked by the Respondent and that he waited several days for information regarding his visa from the Respondent and from the agent, but neither the agent nor the Respondent provided him with the promised assistance with obtaining his visa.

7. In addition, the Claimant asserted that he trained with the Respondent from 9 to 27 August 2014 without receiving any salary. In support of his argumentation, the Claimant provided several documents, such as media reports,.

8. The Claimant added that, on 27 August 2014, the Respondent allegedly asked him to leave the club and to sign a voucher, which he refused to sign and which established: "*Hereby I Player A, 12/01/1985, confirm that I have received USD 10,000 cash by the club to leave the club: Training (termination) and return to my country by the ticket that provided by the club*." In support of his argumentation, the Claimant submitted a document with an illegible handwritten date, bearing the header and the stamp of the Respondent, not signed by the Claimant. The Claimant further asserted that the Respondent never paid him the amount referred to in said voucher, and that he returned to Country B on 28 August 2014, with an electronic flight ticket provided by the agent.

9. Such claim was sent to the Respondent via the Football Association of Country D and had remained unanswered by the Respondent. Subsequently, on 18 February 2016, on the basis of the facts and arguments available on file at that time, the DRC passed a decision bearing in mind that the Respondent had not responded to the claim.

10. On 19 June 2016, the Respondent filed a request for provisional measures with the Court of Arbitration for Sport (CAS) against FIFA and the Claimant, requesting, *inter alia*, that FIFA be ordered to render a motivated decision relating to the issue between the Respondent and the Claimant (cf. *CAS XXX Club C v. FIFA & Player A).* In its request, the Respondent principally submitted that FIFA has rendered a decision in the matter at hand "*(…) without granting* [Club C] *the right to be heard and the right to access the files of the case and submit evidence, thus breaching* [Club C]*'s due process. Moreover*, [Club C] *also had been denied the right to receive a motivated decision*."

11. On 28 July 2016, FIFA informed the CAS that, in view of new evidence provided and in order to ensure that the Respondent's right to be heard be protected, it decided to re-start the procedure before FIFA relating to the matter between the Claimant and the Respondent.

12. The Respondent informed the CAS that it withdrew its application and, on 29 July 2016, a termination order was issued by the CAS, in which the Deputy President of the CAS Appeals Arbitration Division ruled that: "(…) *in view of the above, the request for provisional measures filed by* [Club C] *shall be deemed withdrawn and the procedure CAS XXX Club C v. FIFA & Player A shall consequently be terminated and deleted from the CAS roll."*

13. On 17 August 2016, the Respondent was invited by FIFA to submit its position to the claim lodged by the Claimant.

14. In its reply to the claim, the Respondent rejected the Claimant's argumentation and held that the Claimant did not prove that the agent had a valid authorization to sign a

contract on his behalf, since there is no evidence that the Claimant returned the representation contract to the agent.

15. The Respondent further contested the authenticity of the document and claimed that it did not sign any employment contract with the Claimant. Additionally, the Respondent held that the document submitted by the Claimant was drafted by the agent on his own letterhead and that the electronic signatures that appear on it have been copied from other documents and electronically inserted. The Respondent further stated that therefore, there was no valid employment contract binding the parties. In addition, the Respondent stated that the Claimant himself in his claim allegedly acknowledged the non-existence of an employment contract, by referring to a "*pre-contract*" in some parts of his claim.

16. Moreover, the Respondent pointed out that the emails exchanged between the Claimant and the agent on 9 and 10 July 2014, whereby the agent asked the Claimant to sign the representation contract, established that the earliest date on which the Claimant could have possibly signed the representation contract was on 10 July 2014, and not 8 July 2014, which is the date indicated on the representation contract. The Respondent added that 13 and 14 July 2014 were a weekend holiday in Country D. The Respondent concluded that, therefore, no employment contract could have been signed on 14 July 2014 and, consequently, the date of conclusion indicated on the document is wrong and proves that the Respondent could not have signed the document.

17. The Respondent further claimed that it would have never signed an employment contract before the medical examination of the Claimant, which had not been realized yet in July 2014, and that it would have never agreed to sign a contract which established that the Respondent agrees to pay all taxes due on its employee, as indicated in the document.

18. In addition, the Respondent highlighted that the Claimant was aware that his training in August 2014 was only a try-out training. In support of its argumentation, the Respondent, who submitted several documents, explained that it sent to the Claimant via his agent a return flight ticket to arrive in Country D on 7 August 2014 and to leave Country D on 28 August 2014 and only applied for a tourist entry visa for the Claimant. The Respondent further claimed that when the Claimant arrived in Country D, he only requested a 30 days entry visa.

19. In addition, the Respondent stated that the Claimant trained with the Respondent from 9 until 14 August 2014, following which it was not convinced of his skills. Consequently, the Respondent offered him to leave the club sooner or to train with the Respondent until 28 August 2014 and that the Claimant decided to stay until this date. The Respondent further claimed that it paid the Claimant USD 10,000 as a compensation

for the six days of training and asked him to sign a receipt of payment, which the Claimant refused.

20. Additionally, the Respondent asserted that the media reports submitted by the Claimant came from a non-official website, which is not operated by the Respondent.

21. In his replica, the Claimant maintained his previous argumentation, claiming that the representation contract with the agent was signed before the agent concluded the alleged employment contract on his behalf. The Claimant further raised that the copy of the document sent to FIFA is only a copy sent by email by the agent, and not the original version. The Claimant asserted that the signature of the president of the club on the document is a real one.

22. The Claimant added that the fact that he only had a touristic visa of thirty days when he arrived in Country D does not prove that he knew that his training in August 2014 was only a try-out, since even the physiotherapist of the Respondent, who allegedly still works for the Respondent, obtained this visa when he arrived in Country D. In support of his argumentation, the Claimant presented an extract of a website. The Claimant also submitted three signed testimonies, asserting that the Respondent tried to force the Claimant to sign the voucher.

23. In its duplica, the Respondent maintained its previous argumentation, claiming that there is no employment contract binding the Respondent and the Claimant.

24. In reply to FIFA's request following standard procedure to provide the original of the document, the Claimant stated that he does not possess the original highlighting that the agent refused to provide him with it.

25. The Claimant claims to have remained unemployed for seven months and found a club in Country B only in February 2015, where he plays as an amateur.

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 4 August 2015. Consequently, the 2015 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 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 4 August 2015, 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 deemed it appropriate to first stress that, in light of the specific facts regarding the arbitration proceeding carried out in front of the CAS on the basis of the Respondent's request for provisional measures and FIFA's conclusion that the procedure in front of the Dispute Resolution Chamber between the Claimant and the Respondent would be re-started, the decision passed by the DRC on 18 February 2016 is without effect.

5. In view of the foregoing considerations, 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.

6. In continuation, the members of the Chamber started by acknowledging that, according to the Claimant, following the conclusion of the representation contract with the agent, the agent allegedly concluded with the Respondent on his behalf an employment contract valid "*for one football season (2014/2015)",* in accordance with which the Respondent allegedly had undertaken to pay the Claimant the total amount of USD 200,000 in 10 monthly salaries of USD 20,000 each. Further, the Chamber took note of the Claimant's allegations according to which, after he had trained with the Respondent from 9 to 27 August 2014, he returned to Country B on 28 August 2014, because the Respondent had not paid any salary and asked him to leave the club and to sign a voucher, which he refused to sign. Therefore, the Claimant asked that the Respondent pays the total amount of USD 140,000, corresponding to seven monthly salaries, from July 2014 to January 2015.

7. The DRC furthermore took due note of the fact that the Respondent, for its part, categorically denied the conclusion of an employment contract with the Claimant and contested the authenticity of the document named "*agreement*" submitted by the

Claimant. The Respondent admitted that the Claimant trained with it during a few days in August 2014, but insisted that this was only a try-out training, of which the Claimant was aware. The Respondent further declared that finally no employment contract had been concluded due to the fact that it was not convinced of the Claimant's skills.

8. In view of the aforementioned dissent between the parties in respect of the basic question as to whether or not an employment contract had been concluded between them, 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 a valid and binding employment contract had been concluded by and between the parties.

9. Having stated the above, the Dispute Resolution Chamber recalled that the Respondent contested the authenticity of the document and maintained that it never signed an employment contract with the Claimant and that the signatures that appear on the document submitted by the Claimant have been copied from other documents and electronically inserted. The Respondent further held that the document submitted by the Claimant was drafted by the agent on his own letterhead.

10. In this context, the members of the Chamber stressed that, generally, electronic signatures cannot be used to prove beyond doubt that they are genuine signatures of the parties to a contract.

11. At this stage, the DRC took particular note that the Claimant, further to FIFA's relevant request following its standard procedure, admitted being unable to provide the document in its original form signed by the hand of the parties, stating that the copy of the document he submitted is a copy sent by email by his agent, who allegedly refused to provide him with the original.

12. On account of the above circumstances, the Chamber held that the fact that the Claimant had submitted a copy only of the contested document was insufficient to establish the existence of the alleged contractual relationship.

13. Subsequently, the Chamber took into account that the Respondent confirmed that it sent a return flight ticket to the Claimant via the agent, to arrive on 7 August 2014 and return on 28 August 2014, for a try-out training and that following the try-out training during a few days in August 2014 it was not convinced of the Claimant's skills.

14. Turning their attention to the unsigned voucher submitted by the Claimant, which reads that "*Hereby I Player A, 12/01/1985, confirm that I have received USD 10,000 cash by the club to leave the club: Training (termination) and return to my country by the*

ticket that provided by the club", the members of the Chamber took into account that according to the Respondent, the Claimant was asked to sign such voucher in order to confirm receipt of USD 10,000 as compensation for his try-out training with the Respondent.

15. In this regard, the Chamber agreed that said voucher cannot be considered sufficient proof of the existence or the termination of an employment contract.

16. Having duly taken note of the aforementioned documentation presented by the Claimant, the members of the Chamber held that in order for the Chamber to be able to assume that the Claimant and the Respondent had indeed been bound through a contractual relationship with the terms as described by the Claimant, it had to be established, beyond doubt, by documentary evidence, that the said parties had indeed entered into a respective labour agreement, and, if so, under which terms. In general, the members of the Chamber held that they could not assume that an employment contract had been concluded by and between parties simply based on circumstances which, in general, may be likely but do not imply with certainty the signing of a contract. In addition, the members of the Chamber agreed that the Dispute Resolution Chamber must be very careful with accepting documents, other than the duly signed employment contract, as evidence for the conclusion of a valid and legally binding contract.

17. In respect of the foregoing, the members of the Chamber had to conclude that the documents presented by the Claimant did not prove beyond doubt that the Claimant and the Respondent had validly entered into an employment contract, regardless of the fact that the Claimant trained with the Claimant for a certain period of time.

18. As a consequence, the Dispute Resolution Chamber decided that, since the Claimant had not been able to prove beyond doubt that an employment contract had validly been concluded between himself and the Respondent, there was no possibility for the Chamber to enter into the question whether or not such alleged employment contract had been breached.

19. All the above led the Dispute Resolution Chamber to conclude that the claim of the player has to be rejected.

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III. Decision of the Dispute Resolution Chamber

The claim of the Claimant, Player A, is rejected.

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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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Encl: CAS directives