

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 28 April 2016,

in the following composition:

Geoff Thompson (England), Chairman

Santiago Nebot (Spain), member

Alejandro Maron (Argentina), member

on the claim presented by the player,

Player A, country B

as Claimant / Counter-Respondent

against the club,

Club C, country D

as Respondent / Counter-Claimant

and the club,

Club E, country B

as Intervening Party

regarding an employment-related dispute arisen between the parties

I. Facts of the case

1. On 27 August 2012, the player from country B, Player A (hereinafter: *player* or *Claimant / Counter-Respondent*) and the club from country D, Club C (hereinafter: *club* or *Respondent / Counter-Claimant*) signed an employment contract (hereinafter: *contract*) valid as from said date until 31 May 2013.
2. According to art. 3 of the contract, the club *inter alia* undertook to pay the player the amount of EUR 250,000 over ten months, i.e. EUR 25,000 per month as from 28 August 2012 until 28 May 2013.
3. By means of a notice dated 21 December 2012, the player put the club in default of payment of the amount of EUR 75,000, corresponding to his remuneration for the months of August, September and November 2012, setting a deadline for payment expiring on 4 January 2013.
4. By means of a notice dated 15 January 2013, the player terminated the contract on the basis of the club's alleged non-compliance with its financial obligation to pay his monthly salaries for the months of August, September, November and December 2012, totalling EUR 100,000.
5. On 28 February 2013, the player signed an employment contract with the club from country B, Club E (hereinafter: *Club E* or *Intervening Party*). According to said contract, the player would receive, as from 1 March 2013 until 30 June 2013, a gross monthly remuneration of 15,400.
6. On 22 April 2013, the player lodged a claim for breach of contract against the club with FIFA and requested that the latter be ordered to pay him EUR 214,650, which amount was composed as follows:
 - EUR 112,500 as outstanding monthly salaries based on the months of August, September, November, December 2012 and January 2013 *pro rata temporis*;
 - EUR 37,500 as compensation for breach of contract related to the period of time during which the player remained unemployed, i.e. as of 15 January 2013 until 28 February 2013;
 - EUR 64,650 as compensation for breach of contract consisting of the difference between his remuneration on the basis of the new employment contract he signed with the club from country B on 28 February 2013 and his contract with the club from country D.

7. The player further claimed that 5% interest shall apply on the above-mentioned amounts, calculated as from the relevant due dates, and that the club bears the costs of the present proceedings.
8. In his statement of claim, the player stressed that whereas he always complied with his obligations, the club only paid him his monthly remuneration for the month of October 2012.
9. Also, the player insisted that in spite of his default notice, the club continued to refuse to pay him his outstanding salaries, which gave him just cause to terminate the contract.
10. In its reply to the player's claim, the club fully rejected the player's argumentation and deemed that the player's termination of the contract is unlawful. Consequently, it lodged a counterclaim against the player.
11. First of all, the club held that since the player allegedly missed the pre-season camp with his former club, who had reportedly "*removed*" him from the A team's trainings, he was unfit and could only be fielded in 3 out of the 22 matches the club played until 15 January 2013.
12. Consequently, the club deemed that the player, who had reportedly concealed his fitness state to the club, cannot be seen as having executed his contractual obligations.
13. Additionally, the club stressed that whereas the player was unable to perform at the level of the club's expectations, he was constantly creating problems and asking to receive his dues, which it deems unethical.
14. As to the player's financial claim, the club firstly stressed that since the contract was terminated on 15 January 2013, the player cannot claim the payment of his salary for January 2013, as said instalment would only become payable on 28 January 2013, i.e. after the termination of the contract by the player.
15. Moreover, the club deemed that as the player was aware that he would remain unemployed for a while should he terminate the contract, he is not entitled to claim any payment for the period of time between 15 January 2013 and 28 February 2013.
16. In continuation, the club asserted that the player's claim for payment of the difference between his remuneration under the contract and his new contract is an attempt of unjust enrichment, as it is the player who decided to put an end to the contract.

17. What is more, and as the club considered that the player's unilateral termination of the contract is unlawful, the club lodged a counterclaim against the player asking to be awarded compensation in the amount of EUR 250,000, i.e. the entire financial value of the contract both parties signed on 27 August 2012.
18. In his reply to the club's comments and counterclaim, the player maintained that pursuant to FIFA Regulations, due to the club's repeated breaches of contract he had just cause to terminate the contract.
19. In particular, the player stressed that apart from the irrelevance of the club's arguments in relation to his performance level, the club did not deny that it repeatedly failed to pay his salaries, even after he had put the club in default of payment on 21 December 2012.
20. In its final position, the club reiterated that the player's performance was unsatisfactory and that considering the absence of commitment towards the club, it has to be considered that it is the player who did not comply with his contractual obligations.
21. In this respect, the club explained that it had decided to put the player in default and order him to resume training, but that said notice was never issued as the player's notice of termination was received by the club on the same day, i.e. 15 January 2013.
22. The club asserted that, at worst, the remuneration the player earned on the basis of his new contract shall be taken into account.
23. Upon FIFA's request, Club E submitted its position in relation to the matter at hand and held that, for its part, it never intended to harm the player's former club. In this respect, Club E asserted that it had assured itself that the player had lawfully put an end to his contractual relationship with his former club prior to signing a contract with him.
24. In continuation, Club E asserted that considering the remuneration it offered to the player, it cannot be held that Club E would have encouraged the player to leave the club from country D.
25. Finally, Club E underlined that considering the FIFA Regulations, it is clear that if the club remained in breach of payment for more than 90 days, it should be found that it breached 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 22 April 2013. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2012; 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 and par. 2 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 22 April 2013, the 2012 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. In this respect, the Chamber acknowledged that the parties had signed an employment contract valid as from 27 August 2012 until 31 May 2013, in accordance with which the Claimant / Counter-Respondent was entitled to receive, *inter alia*, EUR 25,000 per month as from 28 August 2012 until 28 May 2013.
6. In continuation, the members of the Chamber took into account that, on 21 December 2012, the Claimant / Counter-Respondent put the Respondent / Counter-Claimant in default of payment of the amount of EUR 75,000, i.e. the amount corresponding to his remuneration for the months of August, September and November 2012, and that on 15 January 2013, having received no payment or reaction from the Respondent / Counter-Claimant to his default notice, the

Claimant / Counter-Respondent notified the club of the termination of the contract on the basis of the alleged outstanding remuneration.

7. The Chamber further noted that the Respondent / Counter-Claimant, for its part, rejected the player's argumentation and held that the Claimant / Counter-Respondent terminated the contract unlawfully. Consequently, the Respondent / Counter-Claimant lodged a counterclaim against the Claimant / Counter-Respondent.
8. In this respect, the Respondent / Counter-Claimant argued that the Claimant / Counter-Respondent was unfit and therefore could be fielded in few matches only, which, according to the Respondent / Counter-Claimant, qualifies as a breach of his obligations. In addition, according to the Respondent / Counter-Claimant, the player showed an unethical behaviour as he was constantly complaining to the club in relation to the alleged non-payment of his remuneration.
9. Considering the diverging position of the parties, the members of the Chamber highlighted that the underlying issue in this dispute was to determine as to whether the Claimant / Counter-Respondent terminated the employment contract on 15 January 2013 with or without just cause. The Chamber also underlined that, subsequently, it would be necessary to determine the consequences for the party that was responsible for the early termination of the contractual relation with or without just cause.
10. In continuation, the Chamber proceeded with an analysis of the circumstances surrounding the present matter, the parties' arguments as well the documentation on file, bearing in mind 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.
11. Against such background, the Chamber turned its attention to the question of the alleged non-payment by the Respondent / Counter-Claimant of the player's monthly remuneration for the months of August, September, November and December 2012, which was the motive for the Claimant / Counter-Respondent to terminate the contract on 15 January 2013. On a side note, the Chamber wished to point out that it was undisputed by the parties that the club had paid the player's remuneration for the month of October 2012.
12. In this respect, the Chamber noted that the Respondent / Counter-Claimant had not denied that it had not remitted the Claimant / Counter-Respondent's remuneration for the afore-cited months. In its line of defence, the Respondent / Counter-Claimant rather focused on the arguments that the Claimant / Counter-Respondent allegedly was unable to execute his obligations towards the Respondent / Counter-Claimant in a satisfactory manner due to fitness problems.

13. Having said this, the members of the Chamber concluded that the Respondent / Counter-Claimant mainly invokes an alleged poor fitness and performance level of the Claimant / Counter-Respondent in order to justify the non-remittance of the latter's remuneration for August, September, November, and December 2012.
14. In this regard, the Chamber referred to its jurisprudence in accordance with which a decrease in, or deduction from, contractual payments to a player by a club on the basis of a player's alleged low performance cannot be accepted, due to the unilateral and arbitrary character of such measure by a club. Along these lines, the Chamber confirmed that poor or unsatisfactory performance of a player cannot, by any means, be considered as a valid reason not to remit a player's salary and that arguments based on such reasoning have to be rejected. Consequently, the members of the Chamber concluded that the Respondent / Counter-Claimant had no valid reason not to pay the Claimant / Counter-Respondent's remuneration.
15. In continuation, and bearing in mind that the player's monthly remuneration was not payable until the 28th day of each relevant month, the Chamber established that four salaries, corresponding to the months of August, September, November and December 2012, had fallen due and remained outstanding at the time of the termination of the contract by the Claimant / Counter-Respondent. Consequently, the Chamber concluded that the Respondent / Counter-Claimant had seriously and repeatedly neglected its financial contractual obligations towards the player.
16. On account of the above, the Chamber decided that, contrary to the Respondent / Counter-Claimant's position that the player's termination of the contract was unlawful, the Claimant / Counter-Respondent had just cause to unilaterally terminate the contract on 15 January 2013 and that the Respondent / Counter-Claimant is to be held liable for the early termination of the contract with just cause by the Claimant / Counter-Respondent.
17. Accordingly, the members of the Chamber decided to reject the claim of the Respondent / Counter-Claimant.
18. Prior to dealing with the consequences of the early termination of the employment contract with just cause by the Claimant / Counter-Respondent, the members of the Chamber decided that the Respondent / Counter-Claimant must fulfil its obligations as per the contract up until the termination of the contract in accordance with the general legal principle of "*pacta sunt servanda*".
19. On account of the above, the Chamber decided that the Respondent / Counter-Claimant is liable to pay to the Claimant / Counter-Respondent the amounts which were outstanding under the contract at the moment of the termination, *i.e.* EUR 100,000, corresponding to the salaries relating to August, September, November and December 2012.

20. In addition, taking into consideration the Claimant / Counter-Respondent's request, the Chamber decided to award the Claimant / Counter-Respondent interest at the rate of 5% *p.a.* on each instalment, calculated as of the day following the day on which the respective instalments fell due.
21. In continuation, having established that the Respondent / Counter-Claimant is to be held liable for the termination of the contract with just cause by the Claimant / Counter-Respondent, the Chamber decided that, in accordance with art. 17 par. 1 of the Regulations, the Respondent / Counter-Claimant is liable to pay compensation to the Claimant / Counter-Respondent. Consequently, the Chamber focused its attention on the calculation of the amount of compensation for breach of contract in the case at stake.
22. 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 player 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.
23. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained 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. 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.
24. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent / Counter-Claimant to the Claimant / Counter-Respondent 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.
25. Having said that, the members of the Chamber turned their attention to the remuneration and other benefits due to the Claimant / Counter-Respondent 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.

26. In this respect, the Chamber proceeded with the calculation of the monies payable to the Claimant / Counter-Respondent under the terms of the employment contract as from its date of termination with just cause by the Claimant / Counter-Respondent 1, *i.e.* 15 January 2013, until 31 May 2013 and concluded that the Claimant / Counter-Respondent would have received in total EUR 125,000, *i.e.* 5 monthly salaries of EUR 25,000 each, as remuneration had the contract been executed until its expiry date. Consequently, the Chamber concluded that the amount of EUR 125,000 serves as the basis for the final determination of the compensation for breach of contract in the matter at hand.
27. In continuation, the Chamber verified as to whether the Claimant / Counter-Respondent had signed an employment contract with another club during the relevant period of time, by means of which he would have been able 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.
28. In this respect, the Chamber recalled that the Claimant / Counter-Respondent had found new employment with the club from country B Club E, as from 1 March 2013 until 30 June 2013. In accordance with the employment contract signed between the Claimant / Counter-Respondent and Club E, the Claimant / Counter-Respondent was entitled to a monthly salary of 15,400, thus approximately EUR 11,000, *i.e.* 3 x 15,400, during the relevant period of time.
29. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand as well as the Claimant / Counter-Respondent's general obligation to mitigate his damage, the Chamber decided that the Respondent / Counter-Claimant must pay the amount of EUR 114,000 to the Claimant / Counter-Respondent as compensation for breach of contract.
30. In addition, taking into account the Claimant / Counter-Respondent's request, the Chamber decided that the Respondent / Counter-Claimant must pay to the Claimant / Counter-Respondent interest of 5% *p.a.* on the amount of compensation as of the date on which the claim at hand was lodged, *i.e.* 22 April 2013, until the date of effective payment.
31. Finally, as regards the Claimant / Counter-Respondent's request that the Respondent / Counter-Claimant shall bear the costs of the present proceedings, the Chamber referred to art. 18 par. 4 of the Procedural Rules and as well as to its

long-standing and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber. In addition, the Chamber underlined that in accordance with said provision, proceedings relating to disputes between clubs and players in relation to the maintenance of contractual stability as well as international employment-related disputes between a club and a player are free of charge. Consequently, the Chamber decided to reject the Claimant's request relating to procedural costs.

32. The Chamber concluded its deliberations in the present matter by rejecting any further claim lodged by the Claimant / Counter-Respondent.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant / Counter-Respondent, Player A, is partially accepted.
2. The counterclaim of the Respondent / Counter-Claimant, Club C, is rejected.
3. The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent, **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of EUR 100,000, plus 5% interest *p.a.* until the date of effective payment, as follows:
 - 5% *p.a.* as of 29 August 2012 on the amount of EUR 25,000;
 - 5% *p.a.* as of 29 September 2012 on the amount of EUR 25,000;
 - 5% *p.a.* as of 29 November 2012 on the amount of EUR 25,000;
 - 5% *p.a.* as of 29 December 2012 on the amount of EUR 25,000.
4. The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 114,000, plus 5% interest *p.a.* on said amount as from 22 April 2013 until the date of effective payment.
5. In the event that the amounts due to the Claimant / Counter-Respondent are not paid by the Respondent / Counter-Claimant within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.
6. Any further claim lodged by the Claimant / Counter-Respondent is rejected.
7. The Claimant / Counter-Respondent is directed to inform the Respondent / Counter-Claimant 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.

Note relating to the motivated decision (legal remedy):

According to art. 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
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For the Dispute Resolution Chamber:

Marco Villiger
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Encl. CAS directives