

## **Decision of the Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 11 June 2015,

in the following composition:

**Thomas Grimm (Switzerland)**, Deputy Chairman  
**Carlos González Puche (Colombia)**, member  
**Santiago Nebot (Spain)**, member  
**Mohamed Al-Saikhan (Saudi Arabia)**, member  
**Zola Majavu (South-Africa)**, member

on the claim presented by the player,

**A**, country C,  
represented by Mr xxxxx

as *Claimant*

against the club,

**B**, country T

as *Respondent*

regarding an employment-related dispute between the parties

## I. Facts of the case

1. On 1 January 2014, the player from S, A (hereinafter: *the player*), and the club from T, B (hereinafter: *the club*), signed an employment contract valid as from 1 January 2014 until 31 December 2014.
2. In accordance with the employment contract, the player was inter alia entitled to receive monthly remuneration of USD 8,000, for an annual total of USD 96,000.
3. Article 6 of the contract provides that in case of failure to perform the club may order the player to stop performing his obligations *"with a pay of half prescribed remuneration until the circumstances become relieved or better"*.
4. Article 8 of the contract inter alia provides that *"upon mutually agree, either one party to this contract may terminate this contract prior to the expiring date under this contract"*; and that the contract may be terminated by the club with notice of no less than one month if the player is in breach of the his obligations (i.e. failure to perform, criminal activity etc.); and that the player may terminate the contract in case the club fails to remunerate the player for three consecutive months, with notice of at least one month.
5. On 3 November 2014, the player put the club in default of the amount of USD 24,000 relating to salary for the months of October, November and December 2014.
6. On 1 December 2014, the player lodged a claim before FIFA against the club asking that he be paid outstanding remuneration in the amount of USD 24,000 in relation to the employment contract with interest at the rate of 15% *p.a.* to run as from the date of notification of the decision rendered by the DRC as well as the payment of legal fees.
7. The player claims that on 14 July 2014 he was made to play with the club's youth team, which he alleges is *"contrary to the contract"*.
8. In its reply, the club confirms that it paid USD 72,000 to the player between January 2014 and September 2014. The club provided a letter dated 1 September 2014 signed by the player which states that *"nevertheless, the club has not registered Mr A to play in Premier League of T, FA Cup, and League Cup or Tournament that the club participated in. And therefore, the player has not play in any match officially for the club. All of the club decisions/actions are lawful as it is consistent accordance with the FIFA Rules and Regulations and have act in good faith. Moreover, to honour its obligation, B has treat the player fairly and morally and has fully paid the player salaries, accommodation"*

*fees, training bonuses from January, 2014 to August, 2014 according to the contract".*

9. The club further provides a termination proposal dated 18 August 2014 sent by the player's representative which proposes mutual termination of the contract if the player received USD 30,000. On 25 August 2014, the club refused the terms of this termination proposal, and replied to said termination proposal that it had previously proposed to pay to the player four months compensation, which he refused. In the same reply, the club stated that they had conducted an evaluation on the player and had indeed ordered him to train with the youth team, and reminded him that the contract states *"the contractor is also required to comply with any and all orders from the trainer, manager and President of the Football Club as part of this contract"*.
10. The club further alleges that in October 2014, the player *"trained with us as usual"* but that the day before he was to be paid they had lost contact with him and had been informed that the player had already left the country. The club claims that as a result, the player had failed to perform his obligations set forth in the employment contract during November and December 2014, thereby breaching said contract and absolving the club of its obligation to pay the claimed sum of USD 24,000.
11. In his response to the statements of the club, the player reiterated that the club expressly admitted it had only paid USD 72,000. The player reiterates that he was made to play with the youth team as from 14 July 2014 and that he trained with said youth team until 3 November 2014.
12. The player further acknowledges that he sent a termination proposal on 18 August 2014, and states that the reply of the club dated 25 August 2014 reads: *"the contract shall be valid unless terminated under the conditions in section 8. in the contract"*, thereby taking it to mean that he is owed all remuneration until the prescribed date of termination of contract, *i.e.* 31 December 2014.
13. With regard to the correspondence dated 1 September 2014, the player clarifies that he acknowledged that he was paid in full until that date, but notes that said document does not state that the obligations of the club relating to the employment contract had stopped, in particular the payment of remuneration for October, November and December 2014.
14. The player points out that regarding the statement of the club that it had lost contact with the player on the day before he was to be paid is false, as he trained with the youth team until 2 November 2014, which was the last day of the Championship. The player claims that on 3 November 2014 he sought

payment of remuneration and was told he would not be paid, thereby forcing his legal representative to send a formal notice of default. He further claims that the allegation that the club had been told that the player had left the country could only be false and his passport shows the immigration stamp of departure dated 9 November 2014.

15. Finally, the player claims that he had fulfilled all his obligations relating to November and December 2014, contrary to what the club is claiming, as all players were allegedly on holiday from that moment on and therefore left the club.
16. In its final remarks, the club alleges that they never registered the player because the head coach did not want to use the player in the competitions, but did wish for the player to train with the squad, whether senior or youth, reiterating that the contract states that the player must follow the club's orders.
17. The club further alleges it falls under its rights to order the player to train with the youth team and therefore did not breach the contract or any rules or regulations of FIFA.
18. The club states that with regard to the player asking for payment on 3 November 2014, it informed the player it would pay USD 8,000 for the month of October 2014 on 5 November 2014 and would pay the salaries for November and December 2014 if the player trained with the club during that period. Furthermore, the club alleges that they usually pay the players between the first and fifth day of the month and that the reason for non-payment of the month of October 2014 was because the player did not show up on 5 November 2014 to receive his salary. They also claim that the player was not entitled to be paid the months of November and December 2014 at the beginning of November as the player had not rendered any services.

## **II. Considerations of the Dispute Resolution Chamber**

1. First, 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 1 December 2014. Consequently, the Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2014; 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 C and a club from T.
3. Furthermore, the Chamber analysed which edition of the 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 1 December 2014, the 2014 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Dispute Resolution Chamber and the applicable regulations having been established, the DRC entered into the substance of the matter. The Chamber started by acknowledging the aforementioned facts of the case as well as the documentation contained in the file.
5. The Chamber duly noted that on 1 January 2014, the Claimant and the Respondent had concluded an employment contract valid as from the date of signature until 31 December 2014. As to the financial terms of the contract, the members of the Chamber noted that the parties had agreed that the Respondent would pay the Claimant USD 8,000 a month.
6. The DRC further observed that the Claimant lodged a claim in front of FIFA against the Respondent seeking to be paid the amount of USD 24,000, indicating that the Respondent had failed to pay salaries for the months of October, November and December 2014 to the Claimant.
7. Subsequently, the Chamber noted that the Respondent, in its defence, submitted several documents; it did not however dispute that the payments of October, November and December 2014 had not been paid to the Claimant.
8. Furthermore, the members of the Chamber acknowledged, from the assertions of the Respondent and the documentation on file, that the Claimant appeared not to have rendered his services for the Respondent as from 9 November 2014, in accordance with a copy of the Claimant's passport. The Claimant, for his part, asserted that his absence was justified on the grounds that all members of the club were on leave due to the holiday break.
9. In this regard, the Dispute Resolution Chamber recalled the basic principle of the burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules,

according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.

10. In this context, the members of the Chamber noted that the Claimant did not submit any documentation regarding the alleged authorisation of the holiday absence.
11. Consequently, the DRC considered that the Claimant had not sufficiently substantiated its claim pertaining to the full payment of the salaries of November and December 2014, as he did not present any conclusive documentary evidence which could corroborate that he had validly been absent or rendered his services for the Respondent from 9 November 2014.
12. In view of all of the above and in particular taking into account that the Respondent did not contest that the relevant salaries had remained unpaid, the Dispute Resolution Chamber decided that, in accordance with the general principle of *pacta sunt servanda*, the Respondent must fulfil its contractual obligations towards the Claimant for the time during which the Claimant rendered his services for it, and is to be held liable to pay the Claimant the amount of USD 10,133, corresponding to the outstanding salary payment of October 2014 and the Claimant's pro-rata salary for services rendered from 1 November 2014 until 9 November 2014.
13. In continuation and with regard to the Claimant's request for interest, the members of the Chamber decided that the Claimant is entitled to receive interest at a rate of 5% *p.a.* on the amount of USD 10,133 until the date of effective payment as from 24 June 2015, as per the Claimant's request.
14. The Dispute Resolution Chamber concluded its deliberations in the present matter by rejecting any further claim of the Claimant.

### **III. Decision of the Dispute Resolution Chamber**

1. The claim of the Claimant, A, is partially accepted.
2. The Respondent, B, has to pay to the Claimant **within 30 days** as from the date of notification of this decision, the amount of USD 10,133 plus 5% interest *p.a.* as from 24 June 2015, until the date of effective payment.

3. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's 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 Dispute Resolution Chamber of every payment received.

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**Note relating to the motivated decision** (legal remedy):

According to article 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  
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For the Dispute Resolution Chamber:

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Markus Kattner  
Acting Secretary General

Encl: CAS directives