Decision of the

Dispute Resolution Chamber

passed in Zurich, Switzerland, on 15 June 2017,

in the following composition:

Thomas Grimm (Switzerland), Deputy Chairman
Mario Gallavotti (Italy), member
Guillermo S. Guale (Ecuador), member
Johan van Gaalen (South Africa), member
Joaquim Evangelista (Portugal), 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 9 February 2015, the Player of Country B, Player A (hereinafter: *the Claimant*), and the Club of Country D, Club C (hereinafter: *the Respondent*), signed an employment contract (hereinafter: *the contract*) valid from the date of signature until 9 December 2015.

2. According to art. 2. I) b) 1. of the contract, the Claimant was entitled to receive *inter alia* a total amount of 1,200,000,000 as follows:
   - 84,000,000 as monthly salary, payable from March 2015 until December 2015;
   - 360,000,000 as "*down payment 30 %*".

3. According to art. 2.I) b) 1. of the contract, the above mentioned amounts are payable "*on the date of the next 10 months during the period of work commitments*."

4. Art. 2. I) b) 3. of the contract establishes that "*if club does not pay 30 days from agreed payment date, player has the right to terminate the contract, and club must pay full amount of the contract.*"

5. According to art. 5. par. 1. of the contract, "*when the institute of work between the* [Respondent] *and the* [Claimant] *has not ended, while the competition has ended, the* [Respondent] *has an obligation to pay wages during the remaining* [Claimant]*'s work institute*."

6. According to art. 5. par. 4. of the contract*, "if Competition League F and the Cup of Country D Year 2014/2015 based on Football Association E decision cannot be applied at all, by any cause because of something that cannot be avoided, then the* [Claimant] *and the* [Respondent] *agree that the Institute of labour which is considered expired before the deadline."*

7. On 2 May 2015, the National Competition of Country D was cancelled, following a Decree of the Football Association of Country D (hereinafter: *the Football Association E*).

8. On 23 May 2015, the Respondent unilaterally terminated the contract with retrospective effect from 2 May 2015, due to the "*Final decision from executive committee of the Football Association of Country D dated May, 2nd 2015*" and regarding "*force majeure due to the League F 2015*". The Respondent also stated that it would provide the Claimant with a flight ticket to Country B.
9. On 8 February 2016, the Claimant contacted the Respondent in writing, claiming that it terminated the contract without just cause and requesting the payment

within 10 days of a compensation amounting to 588,000,000, corresponding to 7 monthly salaries from June 2015 until December 2015.

10. On 15 February 2016, the Respondent replied to the Claimant in writing, stating that it had fulfilled its obligations by paying him the amounts of 75,000,000 for the "*agent's fee for management of the Red card PTE*" on 16 February 2015, 84,000,000 on 10 March 2015 as the monthly salary for March 2015, 360,000,000 as an advance payment, 84,000,000 on 21 April 2015 as the monthly salary for April 2015 and by having provided the Claimant with accommodation, a car and a round trip flight ticket Country B - Country D. In its letter, the Respondent also claimed that the termination of the contract had been caused by a force majeure, because of the interruption of all football related activities by the Football Association E at the beginning of May 2015 and because of the sanction imposed on the Football Association E by FIFA on 1 June 2015. Finally, the Respondent asserted that the early termination of the contract is justified, based on art. 5 par. 4 of the contract.

11. On 6 June 2016, the Claimant lodged a claim in front of FIFA against the Respondent, maintaining that the club terminated the contract without just cause and requesting to be awarded the total amount of 588,000,000 as compensation for breach of contract, corresponding to 7 monthly salaries from June 2015 until December 2015, plus interest of 5% *per annum* as of the due date of each unpaid instalment, until the final payment of the requested amount.

12. The Claimant further requested to be awarded the reimbursement of the legal costs and the procedural costs of the procedure.

13. In addition, the Claimant asked that sporting sanctions be imposed on the Respondent.

14. In its reply to the Claimant's claim, the Respondent alleged that the termination of the contract was caused by the cancellation of League F 2015. In this respect, the Respondent explained that, on 2 May 2015, the Executive Committee of the Football Association E decided via a Decree to cancel the 2015 season of the National Competition of Country D, due to force majeure. The Respondent further stated that the Football Association E was suspended by FIFA on 1 June 2015, which cancelled the participation of the Football Association E to all international competitions. In this regard, the Respondent submitted a letter of FIFA dated 1 June 2015 addressed to the Football Association E. The Respondent further claimed that based on the aforementioned reasons as well as art. 5. par. 4 of the contract, it had the right to terminate the contract.

15. In his replica, the Claimant sustained that the Respondent failed to prove that the Football Association E passed a decision on 2 May 2015, since the Respondent provided FIFA with non-translated documents only. The Claimant further claimed that according to jurisprudence of FIFA, the situation of a national association cannot serve as a justification for non-compliance of clubs with respect to contractual payments due to a player. Thus, the Claimant raised that the alleged *"force majeure"* of the Football Association E cannot justify the unilateral termination of the contract by the Respondent. Finally, the Claimant asked that art. 5. par. 4 be considered as void and irrelevant in the case at hand, since said article "*has no meaning in the light of English language*."

16. In its final comments, the Respondent maintained its position and reiterated that according to art. 5 par. 4 of the contract, it had the right to unilaterally terminate the contract.

17. The Claimant informed FIFA that he remained unemployed since the termination of the contract until February 2016, when he started to play as an amateur in the third national league with a Club of Country B, Club G.

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 6 June 2016. 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 an 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 6 June 2016,

the 2016 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

4. Having established the above, 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.

5. In this respect, the members of the DRC acknowledged that, on 2 May 2015, the National Competition of Country D was cancelled, following a Decree issued by the Football Association E.

6. Subsequently, the Chamber also acknowledged that it was undisputed by the parties that following the conclusion of an employment contract on 9 February 2015, the Respondent notified the Claimant of the termination of the contract on 23 May 2015, with retrospective effect as of 2 May 2015, due to the "*Final decision from executive committee of Football Association of Country D dated May, 2nd 2015*" and regarding "*force majeure due to the League F 2015*".

7. In continuation, the members of the Chamber noted that according to the Claimant, the Respondent unilaterally terminated the contract without just cause. In this respect, the Claimant deemed that according to jurisprudence of FIFA, the situation of a national association cannot serve as a justification for non-compliance of clubs with respect to contractual payments due to a player and that art. 5 par 4. of the contract should be declared null and void, since said article "*has no meaning in the light of English language*". Therefore, the Claimant asked to be awarded *inter alia* payment of compensation for breach of the employment contract.

8. The Chamber noted that the Respondent, for its part, rejected the claim put forward by the Claimant, maintaining that it terminated the contract on the basis of art. 5. par. 4 of the contract (cf. point I. / 6. above) as well as on the basis of the decision of the Football Association E to cancel the National Competition of Country D for the season 2015, which was, according to the Respondent, a force majeure situation. Furthermore, the Respondent held that based on the aforementioned reason as well as art. 5. par. 4 of the contract, it had the right to terminate the contract.

9. In view of the foregoing, the DRC focussed its attention on art. 5 par. 4 of the contract, which provides that *"if Competition League F and the Cup of Country D*

Year 2014/2015 based on Football Association E decision cannot be applied at all, by any cause because of something that cannot be avoided, then the [Claimant] *and the* [Respondent] *agree that the Institute of labour which is considered expired before the deadline."*

10. The Chamber duly analysed the contents of said clause and concluded, first of all, that it could not uphold the Claimant's argument that said clause should be declared null and void for it allegedly "*has no meaning in the light of English language*". Consequently, such argument was rejected by the Chamber.

11. Subsequently, the Chamber acknowledged that, on the basis of said clause, in the event of a cancellation of the Competition of Country D for the season 2015, the contract would end prematurely. Indeed, art. 5 par. 4 of the contract contains such resolutive condition, which was accepted by both the Claimant and the Respondent by signing the employment contract. In this regard, the Chamber noted that whereas the Claimant held that the Respondent had not provided a translation of Football Association E's decision dated 2 May 2015, he did not contest in itself that the National Competition of Country D for 2015 was cancelled by the Football Association E.

12. Consequently, the Chamber established that the fulfilment of the resolutive condition contained in art. 5 par. 4 of the contract has prematurely ended the existence of the contractual rights and obligations between the parties.

13. In this context, the Chamber highlighted once more that by signing the employment contract, both the Claimant and the Respondent accepted the consequences deriving from the fulfilment of the condition provided by art. 5 par. 4 of the contract, i.e. the premature termination of the employment contract.

14. On account of all of the above, the Chamber concluded that the Respondent cannot be held liable for a termination of contract without just cause.

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

16. It is highlighted that this decision was passed with the casting vote of the Deputy Chairman of this Chamber in favour of the rejection of the Claimant's claim (cf. art. 14 par. 1 of the Procedural Rules).

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