

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 30 July 2014,

in the following composition:

Thomas Grimm (Switzerland), Deputy Chairman
Johan van Gaalen (South Africa), member
Theodore Giannikos (Greece), member

on the claim presented by the player,

Player J, from country M

as Claimant

against the club,

Club L, from country C

as Respondent

regarding an employment-related dispute arisen between the parties

I. Facts of the case

1. On 18 June 2012, Player J, from country M (hereinafter: *the Claimant*) and Club L, from country C (hereinafter: *the Respondent*) concluded an employment contract (hereinafter: *the contract*) valid as of 20 June 2012 until 30 June 2015.
2. Clause IV of the contract, which governs the player's salary, reads as follows:
"Both Parties agree that the player's annual salary is 1,700,000 Euro. Within ten days of the signing of the contract by both parties, the club prepays the player salary 620,000 Euro, and the club pays the player salary 400,000 Euro before 20th January 2013, and the rest salary is paid 113,300 Euro per month. The first contract year is from June 20, 2012 to June 30, 2013. The second contract year is from July 1, 2013 to June 30, 2014. The third contract year is from July 1, 2014 to June 30, 2015."
3. On 31 January 2013, the parties signed an *"agreement for mutual termination employment contract"* (hereinafter: *the termination agreement*), by means of which they agreed that *"[the Respondent] shall pay [the Claimant] contract release compensation fee 600,000 EURO plus 4.5 month salary (Jan, Feb, March, April and Half of May 2013), totally amount should be 1,237,000 EURO NET"*. The amount of EUR 1,237,000 is broken down as follows:
 - EUR 400,000 payable on 31 January 2013;
 - EUR 200,000 payable on 1 February 2013;
 - EUR 637,000 payable within five working days as of 31 January 2013.
4. The termination agreement further states that *"late charge will be paid 0.02% per day"*.
5. On 28 February 2013, the Claimant lodged a claim before FIFA indicating that the club had not yet fulfilled all its obligations in connection with the termination agreement and, in particular claimed the outstanding amount of EUR 449,800, plus 0.02 % interest per day as of 9 February 2013 until the date of effective payment.
6. In his claim, the Claimant acknowledges receipt of the payment of the amount of EUR 787,200 net; the last payment having been made on 8 January 2013.
7. In its reply, the Respondent sustains that as of the date of signature of the contract until the end of 2012, it paid EUR 1,299,800 to the Claimant while the amount of EUR 850,000 was actually due in consideration of the period the player provided his services and the fact that his annual salary is of EUR 1,700,000. Therefore the Claimant received an amount of EUR 449,800 in excess of his due remuneration. Consequently, the Respondent concluded that it was entitled to deduct this excess payment from the amount due in accordance with the termination agreement and therefore has complied with its obligations.

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 case at hand. In this respect, it took note that the present matter was submitted to FIFA on 28 February 2013. Consequently, the 2012 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) is applicable to the matter at hand (cf. art. 21 par. 2 and 3 of the 2012 edition 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 2012) 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 country M player and a country C club.
3. In continuation, 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 2012), and considering that the present claim was lodged on 28 February 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, entering into the substance of the matter, the members of the Chamber started by acknowledging the facts of the case and the arguments of the parties as well as the documents contained in the file.
5. In this respect and first of all, the DRC acknowledged that, on 18 June 2012, the Claimant and the Respondent had concluded an employment contract valid as from 20 June 2012 until 30 June 2015.
6. Equally, the Chamber took note that, on 31 January 2013, the parties had concluded a termination agreement by means of which the parties agreed that "[the Respondent] shall pay [the Claimant] contract release compensation fee 600,000 EURO plus 4.5 month salary (Jan, Feb, March, April and Half of May 2013), totally amount should be 1,237,000 EURO NET".
7. In addition, the DRC observed that the Claimant is claiming the amount of EUR 449,800 from the Respondent, thereby asserting that the Respondent had partially complied with the above-mentioned termination agreement.
8. Finally, the Dispute Resolution Chamber took note that, for its part, the Respondent had acknowledged having signed the termination agreement with

the Claimant and admitted it did not pay the amount claimed by the Claimant. However, the Respondent justified the non-payment by arguing that, as of the date of signature of the contract until the end of 2012, it paid a total of EUR 1,299,800 to the Claimant while the amount of EUR 850,000 was actually due in consideration of the period the player provided his services and the fact that his annual salary is of EUR 1,700,000. Therefore the Respondent considered that the Claimant received an amount of EUR 449,800 in excess of his due remuneration. Consequently, the Respondent concluded that it was entitled to deduct this excess payment from the amount due in accordance with the termination agreement and therefore complied with its obligations.

9. In this context, the Chamber was eager to emphasise that the parties signed a termination agreement on 31 January 2013 by means of which the Respondent undertook to pay an amount to the Claimant and thereupon agreed on the manner of payment of such amount. In this respect, the DRC stressed that by signing the termination agreement, the Respondent was bound by its terms and, particularly, the obligation of payment of the amount provided for. Thus, the DRC deemed that the Respondent could not, after having concluded the termination agreement, contest the content of said agreement on the basis of alleged payments in excess that were made prior to the date of signing the termination agreement and which, as such, bear no relation with said termination agreement dated 31 January 2013. In other words, the Respondent is not in a position to set-off its debts from said agreement with amounts it would allegedly be entitled to on the basis of a separate contractual agreement, *i.e.* the employment contract.
10. On account of all the above, the DRC judge found that there was no basis to deduct any amount from the amount of EUR 1,237,000 and, bearing in mind that it was undisputed that the Respondent only paid EUR 787,200, as well as the legal principle of *pacta sunt servanda*, the Dispute Resolution Chamber decided that the Respondent is liable to pay the amount of EUR 449,800 to the Claimant.
11. In addition, taking into consideration the Claimant's request as well as the provisions of the termination agreement, the Chamber decided to award the Claimant interest at the rate of 0.02% per day as from 9 February 2013 until the date of effective payment.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player J, is accepted.
2. The Respondent, Club L, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of EUR 449,800 plus interest on said amount at a rate of 0.02% per day as from 9 February 2013 until the date of effective payment.

3. In the event that the abovementioned amount plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.
4. 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.

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:

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For the Dispute Resolution Chamber:

Jérôme Valcke
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Encl. CAS Directives