

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 23 July 2015,

in the following composition:

Thomas Grimm (Switzerland), Deputy Chairman

Mario Gallavotti (Italy), member

John Bramhall (England), 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 30 August 2013, the Player of Country B, Player A (hereinafter: *the Claimant*), and the Club of Country D, Club C (hereinafter: *the Respondent*), concluded an employment contract (hereinafter: *the contract*), valid from 3 September 2013 until 30 June 2014.
2. According to art. 9 of the contract, the Claimant was entitled to receive *inter alia* the following remuneration:
 - EUR 10,000 payable until 1 November 2013;
 - EUR 6,000 as monthly salary;
 - EUR 40,000 payable until 30 June 2014.
3. Art. 17.3 of the contract established that "*The disputes arising from the performance of this contract shall be settled in the following procedural order: 17.3.1. Amicably; 17.3.2. By deferring the dispute to the legal body of the Football Federation of Country D, of the Professional Football League, of the Regional Football Association, FIFA, UEFA as the case may be*".
4. On 22 October 2014, the Claimant lodged a claim before FIFA against the Respondent for outstanding remuneration in the amount of EUR 40,000 plus interest and procedural costs.
5. In this respect, the Claimant held that although he fulfilled his contractual obligations until the expiry of the contractual period, the Respondent had failed to pay the amount of EUR 40,000 that became due on 30 June 2014.
6. The Respondent, for its part, challenged the jurisdiction of the FIFA Dispute Resolution Chamber to decide on the present dispute, on the basis of art. 17.3 of the contract. In particular, the Respondent held that the Claimant should have lodged the claim before the jurisdictional bodies of the Football Federation of Country D which allegedly are independent arbitration tribunals guaranteeing the minimum requirements.
7. The Respondent provided FIFA with extracts of the applicable articles of the Football Federation of Country D Statutes and the Football Federation of Country D Regulations on the Status and Transfer of Players (edition 2014; hereinafter: *the Football Federation of Country D Regulations*), which establish the following:
 - a. with regard to the existing deciding bodies:

Art. 58 of the Football Federation of Country D Statutes indicates that disputes arising from or in connection with the football activity in Country D shall be solved exclusively by the Football Federation of Country D jurisdictional bodies.

Art. 26.1 lit. a) of the Football Federation of Country D Regulations indicates that the first instance deciding body is the Football Federation of Country D/Professional Football League National Dispute Resolution Chamber

(hereinafter: *the NDRC*) and the Regional Football Association Players' Status Commission (PSC).

b. with regard to the jurisdiction of the deciding bodies:

According to art. 26.2 lit. a) of the Football Federation of Country D Regulations, the NDRC is competent to decide on disputes concerning "*the execution, construing and performance of the contracts entered by clubs and players, as well as regarding the maintenance of contractual stability*".

c. with regard to the composition of the deciding bodies:

Art. 26.5 of the Football Federation of Country D Regulations provides that the NDRC of the Football Federation of Country D is composed of a chairman and a deputy chairman elected "*by consensus by the representatives of the players and of the clubs from a list containing minimum five names, prepared by the Football Federation of Country D Executive Committee*", two players' representatives nominated by the Association of Amateur and Non-Amateur Footballers, and two clubs' representatives nominated by the Executive Committee of the Football Federation of Country D.

d. with regard to the possibility of an appeal:

Art. 26.1 lit. b) of the Football Federation of Country D Regulations establishes that the decisions of the NDRC of the Football Federation of Country D may be appealed before the Football Federation of Country D "Review Commission" and that the decisions of the NDRC of the Professional Football League may be appealed before the Professional Football League "Review Commission".

Art. 26.1 lit. c) of the Football Federation of Country D Regulations provides that the decisions of the aforementioned appeal bodies may be appealed to the Court of Arbitration for Sport (CAS).

8. The Respondent failed to present its position as to the substance of the matter, in spite of having been explicitly invited to do so.
9. The Claimant insisted on the jurisdiction of FIFA. In particular, the Claimant held that the jurisdiction clause in the contract also indicated FIFA as the competent deciding body and that he had decided to revert to FIFA in the present matter.

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 October 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 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 would, in principle, be 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. However, the Chamber acknowledged that the Respondent contested the competence of FIFA's Dispute Resolution Chamber to deal with the present case, stating that, according to art. 17.3 of the contract, any dispute arisen between the parties should be submitted to the jurisdictional bodies of the Football Federation of Country D which, according to the Respondent, are independent arbitration tribunals.
4. The Chamber equally noted that the Claimant rejected such position and insisted on the fact that FIFA had jurisdiction to deal with the present matter, affirming that the jurisdiction clause in the contract also indicates FIFA as competent to decide on the present matter and that he had decided to revert to FIFA in this respect.
5. Taking into account the above, the Chamber emphasised that, in accordance with art. 22 lit. b) of the 2015 FIFA Regulations, it is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the Chamber referred to the FIFA Circular no. 1010 dated 20 December 2005. In this regard, the members of the Chamber further referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.
6. While analysing whether it was competent to hear the present matter, the Dispute Resolution Chamber considered that it should, first and foremost, analyse whether the employment contract at the basis of the present dispute actually contained a jurisdiction clause.
7. Having said this, the members of the Chamber turned their attention to art. 17.3 of the contract, which stipulates that *"The disputes arising from the performance of this contract shall be settled in the following procedural order: 17.3.1. Amicably; 17.3.2. By deferring the dispute to the legal body of the Football Federation of Country D, of the Professional Football League, of the Regional Football Association, FIFA, UEFA as the case may be"*.
8. In view of the aforementioned clause, the members of the DRC were of the opinion that art. 17.3 of the contract does not make clear reference to one specific national dispute resolution chamber in the sense of art. 22 lit. b) of the aforementioned Regulations and even provides for the possibility of lodging a contractual dispute in front of FIFA. Therefore, the members of the Chamber deem that said clause can by no

means be considered as a clear arbitration clause in favour of the national deciding bodies, *i.e.* the deciding bodies of the Football Federation of Country D, and, therefore, cannot be applicable. In this regard, the Chamber pointed out that this lack of clarity is also reflected in the Respondent's argumentation since it refers to the alleged competence of the jurisdictional bodies of the Football Federation of Country D, without further precision.

9. Having established that the first criterion for the recognition of the competence of a national decision-making body is not fulfilled in the present matter, the Chamber deemed unnecessary to examine any further points which would need to be assessed before concluding to the competence of a national deciding body.
10. In view of the above, the Chamber established that the Respondent's objection to the competence of FIFA to deal with the present matter had to be rejected and that the DRC is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.
11. Subsequently, 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 par. 2 of the Regulations on the Status and Transfer of Players (edition 2015), and considering that the present claim was lodged on 22 October 2014, the 2014 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
12. 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.
13. In this respect, the DRC acknowledged that the parties to the dispute had signed a valid employment contract on 30 August 2013, valid from 13 September 2013 until 30 June 2014, in accordance with which the Respondent would pay the Claimant *inter alia* a monthly salary of EUR 6,000 each an amount of EUR 40,000 payable until 30 June 2014.
14. In continuation, the DRC took note that according to the Claimant, he had fulfilled his contractual obligations until the expiry of the contractual period, but the Respondent had failed to pay the amount of EUR 40,000 that fell due on 30 June 2014. Consequently, the Claimant requested to be awarded the total amount of EUR 40,000 plus interest and procedural costs.
15. Subsequently, the DRC noted that the Respondent failed to present its position to the claim of the Claimant as to the substance of the matter, in spite of having been invited to do so. By not presenting its position, the DRC was of the opinion that the

Respondent renounced its right to defence and thus, accepted the allegations of the Claimant.

16. Furthermore, as a consequence of the aforementioned consideration, the DRC concurred that in accordance with art. 9 par. 3 of the Procedural Rules, it shall take a decision upon the basis of the documentation already on file; in other words, upon the statements and documents presented by the Claimant.
17. Taking into account the documentation presented by the Claimant in support of his petition, the DRC concluded that the Claimant had substantiated his claim pertaining to outstanding remuneration with sufficient documentary evidence.
18. In particular, the DRC recalled that according to the contract the Claimant was entitled to a payment in the amount of EUR 40,000 on 30 June 2014.
19. On account of the aforementioned considerations, the Chamber established that the Respondent failed to remit to the Claimant remuneration in the amount of EUR 40,000.
20. Consequently, the DRC decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant outstanding remuneration in the amount of EUR 40,000.
21. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber, the Chamber decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the amount of EUR 40,000 as from the date of the claim until the date of effective payment.
22. In addition, as regards the claimed procedural costs, the Chamber referred to art. 18 par. 4 of the Procedural Rules 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. Consequently, the Chamber decided to reject the Claimant's request relating to procedural costs.
23. Finally, the members of the DRC concluded their deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player A, is admissible.
2. The claim of the Claimant is partially accepted.
3. The Respondent, Club C, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of EUR 40,000 plus 5% interest *p.a.* as from 22 October 2014 until the date of effective payment.

4. In the event that the aforementioned sum plus interest is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
5. Any further claim lodged by the Claimant is rejected.
6. 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 art. 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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Jérôme Valcke
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Encl. CAS directives