Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 13 July 2017,

in the following composition:

Geoff Thompson (England), Chairman
Mario Gallavotti (Italy), member
Theo van Seggelen (Netherlands), 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 23 April 2014, the Futsal Player of Country B, Player A (hereinafter: *the Claimant*), and the Futsal Club of Country D, Club C. (hereinafter: *the Respondent*), signed an employment contract (hereinafter: the *contract*), valid from 1 July 2014 until 30 June 2016.

2. According to the contract, the Claimant was entitled to *inter alia* the following remuneration:

   - EUR 26,000 for the *"2013/2014"* season, payable in 10 monthly installments of EUR 2,600;

   - EUR 27,000 for the *"2015/2016"* season, payable in 10 monthly installments of EUR 2,700.

3. The contract stipulated that the remuneration is payable within the first 15 days of each month, starting with the first payment on 1 August 2014 and ending on 1 May of each of the two seasons.

4. Art. 7 of the contract defined as *"SANCTIONS"*, established the following:

   1) If the Claimant is economically sanctioned by the competent organs of the Respondent due to his behavior in accordance with the disciplinary regulations, the Respondent could set off the sanctioned amount from the payable remuneration;

   2) In case that the Claimant repeats in a *"gross"* or *"very gross"* infringement, the Respondent could terminate the contract unilaterally, and the Claimant would not be able to receive compensation from the Respondent;

   3) Without prejudice to the above, the sanction schedule provided in the internal regulations of the Respondent will be applicable.

5. Furthermore, art. 11 of the contract established several scenarios in which the contract could be terminated unilaterally, *inter alia*, the following:

   a) Both parties can terminate the contract unilaterally, provided that the termination notice is given three months in advance minimum;

   b) If the Respondent terminates the contract unilaterally without just cause, the Claimant will have the right to receive the totality of the agreed remuneration pending to be paid;

c) If the Claimant terminates the contract unilaterally without just cause, the Claimant shall pay the Respondent as compensation EUR 10,000.

6. On 24 June 2014, the Respondent unilaterally terminated the contract with the Claimant (hereinafter: *the termination*). In this respect, the Claimant provided a document signed by the Respondent on that date that stated, *inter alia*, the following:

- Due to the *"well-founded suspicion"* regarding the Claimant's lack of discipline, a disciplinary process was initiated against the Claimant by the Respondent, which concluded that the Claimant infringed on several occasions the rules established in the *"Behavior Regulations"* and the contract. As the Respondent considers this attitude *"unacceptable"*, the Respondent has decided to fire the Claimant;

- The Respondent confirms that the Claimant's lifestyle is not appropriate for an athlete and has damaged the Respondent's good image;

- The decision to terminate the contract is motivated by the findings of the disciplinary process conducted by the Respondent;

- The measure was imposed on the basis of the pictures of the Claimant and electronic records in possession of the Respondent, which confirmed the alleged lack of compliance with the disciplinary rules, in particular 11 times, between 10 March 2014 and 24 March of 2014;

- The Claimant's lifestyle caused damages on the hotel, "Hotel E", and he was considered a *"persona non-grata by it"*, which is supported by the statement of the director of the hotel;

- The Claimant has 30 days to submit a written complaint before the competent Labour Court in case he considers this measure to be damaging.

7. On 31 July 2014, the Claimant, via his legal representative, lodged a claim before the City F Administrative and Labour Court (hereinafter: *the Labour Court of Country D*) against the Respondent for compensation for breach of contract requesting the payment of EUR 31,200. The Claimant further requested that the Respondent bears the costs of the proceedings.

8. In his claim before the Labour Court of Country D, the Claimant held that the Respondent terminated the contract unlawfully with immediate effect and requested compensation for the alleged unlawful termination.

9. By means of order XXX dated 5 September 2014, the Labour Court of Country D notified the claim of the Claimant to the Respondent, providing it with a 15 days' deadline to submit its position.

10. By means of a letter dated 3 November 2014, the Claimant, via his legal representative before the Labour Court of Country D, informed about his withdrawal of the claim against the Respondent before said court, requesting the finalization of the proceedings without further ado. In said document the Claimant declared that the reason for the withdrawal of the claim is that *"I do not wish to exercise my claim against the respondent through the legal actions lodged in the courts, but rather by other means"* (free translation from Spanish: Spanish text translated from Language of Country D of the mentioned letter reads as follows: *"Teniendo en cuenta que no deseo ejercer mi reclamación hacia el Demandado a través de las acciones legales presentadas en el juzgado social sino de otro modo…").* Furthermore, the Claimant stated that according to the information he obtained from the Respondent, it would not request the procedural costs, and he was on track to obtain said declaration from it.

11. By way of a letter dated 3 November 2014, the Respondent "*consented to the termination of the lawsuit"* and stated that it did not wish to enforce any expenses against the Claimant.

12. Moreover, by means of order XXX dated 6 November 2014 (hereinafter: *Order G*), the Labour Court of Country D ordered the abandonment of the claim lodged by the Claimant against the Respondent. In this respect, the Labour Court of Country D confirmed that the Claimant abandoned the action by submitting his statement to the court, received on 6 November 2014. The Labour Court of Country D informed the parties that they were not expected to appear before the court on 18 November 2014, date which was set for the hearing. Moreover, in accordance with the document on file, an appeal may be lodged against this order within 15 days following its reception.

13. Furthermore, by virtue of order XXX dated 17 December 2014 (hereinafter: *Order H*), the Labour of Country D established that Order G became binding and enforceable on 9 December 2014.

14. On 25 January 2016, the Claimant lodged a claim before FIFA against the Respondent requesting compensation for breach of contract, claiming the total amount of EUR 53,000 plus 5% interest as of the due dates. The Claimant explained that his request corresponds to EUR 26,000 for the 2014-2015 season and EUR 27,000 for the 2015-2016 season. Furthermore, the Claimant requested the imposition of procedural costs on the Respondent.

15. According to the Claimant, the Respondent unilaterally terminated the contract without just cause. In his claim before FIFA, the Claimant explained that during the holiday period of August 2014, he received the termination of the contract from the club (cf. point I.6 above), in which, according to the Claimant, the Respondent based its termination on *"fake facts"* and *"made up accusations"* in order to, unilaterally and without just cause, terminate the contract.

16. The Claimant, on his part, contested the grounds of the termination of the contract, as the Claimant sustained that his behavior during the time with the club was *"impeccable"*. The Claimant maintained that the pictures of him that the Respondent has in its possession were taken during his days off, days in which the player and other teammates *"went out to distract themselves"*. In this respect, the Claimant insisted that the Respondent was fully aware that he and his teammates *"went out"* during their days off, but that he never performed such leisure activities before trainings or games, and that in any case, his recreational activities in his free time did not affect the image of the Respondent, nor infringed the Respondent's disciplinary regulations. The Claimant further denied causing damages in the hotel properties.

17. Furthermore, the Claimant questioned why the Respondent would decide to sign a contract with him on 23 April 2014, knowing about the alleged incidents between 10 March 2014 and 24 March 2014. According to the Claimant, this only confirms that the alleged discipline infringements did not happen.

18. The Claimant acknowledged that he lodged a claim before the Labour Court of Country D prior to lodging his claim before FIFA (cf. point I.7 above). In this respect, the player explained that he withdrew his claim against the Respondent before the Labour Court of Country D after receiving advice from his Labour Lawyer of Country D, as he understood that FIFA's Dispute Resolution Chamber is competent for this matter (cf. point I.10 above). The Claimant argued that the proceedings never started before the Labour Court of Country D as he withdrew his claim and that he never waived his rights. The Claimant enclosed a copy of Order G (cf. point I.12 above) along with a Spanish language translation of it.

19. Moreover, the Claimant argued that he tried to solve the case amicably before lodging his claim before FIFA. In this regard, the Claimant held that he contacted the club on 30 April 2015 and 15 June 2015, requesting the payment of EUR 53,000, providing the Respondent a 10 days' time limit to proceed with the payment. In this respect, the Claimant held that by means of a letter dated 28 October 2015, the Respondent rejected the possibility to settle the matter amicably as the matter had already been archived after the Claimant's withdrawal of his claim before the Labour Court of Country D.

20. Finally, the Claimant explained that his request for compensation is based on art. 11 of the contract.

21. In its reply, the Respondent rejected the player's claim. In this regard, the Respondent referred to the concept of *res iudicata* and expressed its *"incomprehension"* of the claim lodged by the Claimant before FIFA since the Claimant's claim before the Labour Court of Country D has been terminated with final and binding effect at his own request. In this regard, the Respondent also provided a copy of Order G and Order H (cf. point I.13 above), along with an English translation of the documents.

22. According to the Respondent, the Claimant withdrew his claim as the parties reached an amicable settlement in the matter at hand. In this respect, the Respondent provided a written statement from its Club Secretary dated 20 April 2016 in order to support its argumentation.

23. Furthermore, the Respondent held that as explained in the termination, the Claimant's behavior is unworthy of a professional athlete and caused considerable loss of prestige and financial damage to the Respondent. The Respondent declared that due to the Claimant's behavior, along with one of his teammates, it holds a 30,000,000 debt recorded against them. The Respondent insisted that the evidence enclosed to the termination confirmed that the Claimant materially breached the contract on several occasions. Moreover, the Respondent insisted on the damages caused by the Claimant on the hotel's property and enclosed a written statement of the hotel's director to support its allegation.

24. The Respondent sustained that the termination wrongly refers to incidents between 10 March 2014 and 24 March 2014, as this last date should read 24 May 2014. The Respondent held that the error is the byproduct of an incorrect translation.

25. Alternatively, the Respondent sustained that, since the contract was only drafted in Spanish and there is no Version in Language of Country D signed between them, there is no valid employment between the parties.

26. After being requested by the FIFA administration, the Respondent provided, *inter alia*, the following documentation:

    - A copy of order XXX dated 5 September 2014, by means of which the Respondent was notified of the claim of the Claimant by the Labour Court of Country D;

- A copy of the Power of Attorney granted by the Claimant to Lawyer J dated 22 July 2014, which refers to the dispute between the parties and by means of which the Claimant grants Lawyer J power to represent him before the courts and other competent authorities;

- A copy of the Claimant's claim against the Respondent before the Labour Court of Country D for the "*determination of the unlawful termination of employment and its legal consequences"*;

- Its letter dated 3 November 2014 (cf. point I.11 above).

27. The Claimant submitted his *replica*, wherein he insisted on his claim and main arguments. The Claimant declared that he has not hidden the fact the he lodged a claim against the Respondent before the Labour Court of Country D, but insisted that the proceedings did not start, that a final and binding decision was not taken, and that the parties did not reach a settlement, scenarios that would have ended the dispute amongst the parties. The Claimant held that Orders G and H of the Labour Court of Country D are not formal decisions but that they rather merely finalize the proceedings.

28. In this regard, the Claimant enclosed a statement from Lawyer J, by means of which Lawyer J, *inter alia*, stated that the claim before the Labour Court of Country D was withdrawn following the Claimant's own instructions and that in his opinion there is no *res iudicata.*

29. Furthermore, the Claimant denied that a settlement was reached with the Respondent in the matter at hand and contested the probative value of the statements presented by the Respondent with its reply.

30. Moreover, the Claimant insisted that the evidence enclosed to the termination and the Respondent's reply, namely the pictures and records of the hotel, are not valid proof that would justify the termination of the contract.

31. Furthermore, the Claimant argued that the Respondent did not comply with what was agreed by the parties in the contract, in particular art. 11 of it, as the Respondent did not respect the three-month notice agreed therein.

32. The Claimant insisted on the validity of the contract and the employment relationship between the parties rejecting the Respondent's argumentation that the lack of a copy signed in Language of Country D renders the employment relationship null.

33. The Respondent submitted its *duplica*, reiterating its arguments and confirming its position in respect to the claim.

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 25 January 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 2015 and 2017 editions of the Procedural Rules).

2. Subsequently, the members of the Chamber referred to art. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2016) and art. 11 of Annexe 7 of the latter Regulations, 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 Futsal Player of Country B and a Futsal Club of Country D.

3. However, the DRC noted that the Respondent alleged the lack of competence of FIFA's decision-making bodies due to the concept of *res iudicata*, as it sustained that the Claimant had already lodged a claim before the Labour Court of Country D, prior to lodging his claim before FIFA.

4. In this regard, the members of the Chamber duly noted that the Claimant acknowledged that before initiating proceedings before FIFA, he had lodged a claim before the Labour Court of Country D.

5. Along this line, it was duly observed by the DRC that notwithstanding the Claimant's recognition in respect to his previously filed claim, the Claimant insisted on the competence of FIFA's DRC to deal with the matter at hand. In this respect, the Claimant held that the concept of *res iudicata* has not been configured since, according to him, a) the proceedings before the Labour Court of Country D did not start, b) there was no final and binding decision passed by said court, c) a settlement was not reached by the parties, and d) he did not waive his rights.

6. With the above considerations in mind, the members of the Chamber unanimously deemed that, in a preliminary manner, it was necessary to analyze whether the Chamber is competent or not to enter into the substance of the present matter.

7. In this respect, the Chamber recalled that, on 31 July 2014, the Claimant, via his legal representative, lodged a claim before the Labour Court of Country D

against the Respondent. In said claim, the Claimant held that the Respondent terminated the contract signed by the parties on 23 April 2014 unlawfully with immediate effect and requested, *inter alia*, compensation for breach of contract in respect to the alleged unlawful termination in the amount of EUR 31,200.

8. Subsequently, the DRC highlighted that, on 25 January 2016, the Claimant lodged a claim before FIFA against the Respondent, in which the Claimant sustained that the Respondent unilaterally terminated the contract signed by the parties on 23 April 2014 without just cause and requested, *inter alia*, compensation for breach of contract in the amount of EUR 53,000.

9. At this point, the Chamber noted that the two claims, that is, the claim before the Labour Court of Country D and the claim before FIFA, were filed by the Claimant against the Respondent for compensation for breach of contract, as the Claimant held in both claims that the Respondent, allegedly, terminated the contract signed by the parties on 23 April 2014 unilaterally without a just cause.

10. In light of the above, the members of the Chamber emphasized that the claim brought before the Labour Court of Country D and the claim before FIFA, involve the same subject matter or relief, the same legal grounds and the same parties, *i.e.* the so-called *"triple-identity"* criteria.

11. Having established the above, the DRC focused on the Claimant's allegation that *res iudicata* has not been configured in the present matter, considering that, allegedly, the proceedings before the Labour Court of Country D did not start since he withdrew his claim before the commencement of said proceedings.

12. In this sense, taking into account the proceedings before the Labour Court of Country D, the Chamber duly noted that by means of order XXX dated 5 September 2014, the Labour Court of Country D notified the claim of the Claimant to the Respondent, providing it with a 15 days' deadline to submit its position. The members highlighted that this fact remained undisputed by the Claimant.

13. Furthermore, in accordance with the documentation on file, documentation that has not been contested by the Claimant, the Chamber noted that the Claimant withdrew his claim before the Labour Court of Country D by means of his letter dated 3 November 2014. Moreover, the members of the Chamber observed that the Labour Court of Country D confirmed the withdrawal of the respective claim by means of order number of 6 dated 6 November 2014, and established that the withdrawal became binding and enforceable by means of Order H dated 17 December 2014.

14. As a result of the aforementioned considerations, the DRC found it important to analyse the consequences of such withdrawal before the Labour Court of Country D.

15. In this context, the members of the DRC referred to the well-established procedural principle according to which, once a claim has been sent to the Respondent but is subsequently withdrawn by the Claimant, such withdrawal has the same legal effect as a rejection of the claim.

16. In this regard, the Chamber emphasized that, in accordance with Swiss Procedural law, once a claim has been served on the Respondent, the Claimant's withdrawal from the claim implies a renunciation to the right itself.

17. In view of all of the above, and taking into account that the claim before the Labour Court of Country D was notified to the Respondent on 5 September 2014, the DRC concluded that the Claimant clearly withdrew its claim after the Respondent was notified of the claim and that, afterwards, he filed his claim against the same Respondent and on the same subject before FIFA. Therefore, the members of the Chamber concluded that the claim of the Claimant is inadmissible.

18. Moreover, the DRC considered that, for the sake of preserving legal certainty, it was not competent to decide on the present matter in the light of the principle of *res iudicata.*

19. Furthermore, in addition to the above, the members of the Chamber considered appropriate to highlight that, in line with the spirit of the relevant regulations, FIFA cannot upheld the practice of any party, whether player or club, that chooses to submit an employment related dispute to another decision-making body, and afterwards decides to lodge a claim before FIFA's DRC, with the aim to get the most favourable judgment.

20. In this regard, the Chamber pointed out that only more than one year after the respective withdrawal of the claim before the Labour Court of Country D, the Claimant lodged his claim before FIFA's DRC, an act that demonstrates his intention to select a more convenient forum (better known as "*forum shopping*"), since the Claimant filed two similar claims against the same party and with the same object and cause before two different jurisdictional instances, the Labour Court of Country D and FIFA's DRC. In the Chamber's opinion, the Claimant's actions constitute a violation of the principle *electa una via, non datur recursus ad alteram*, which prohibits a party that has exercised an action before a certain decision-making body to repent in order to go to another more favorable jurisdiction.

21. Taking into account all the foregoing considerations, the Chamber decided that it is not competent to deal with the claim lodged by the Claimant.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player A, is inadmissible.

*****

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 (CAS)
Avenue de Beaumont 2
CH-1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the Dispute Resolution Chamber:

Omar Ongaro
Football Regulatory Director

Enclosed: CAS directives