Decision of the
Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 14 August 2013,

by Mr **Theo van Seggelen** (The Netherlands), DRC judge,

on the claim presented by the player

Player J, from country S

as *Claimant*

against the club

Club T, from country K

as *Respondent*

regarding an employment-related dispute
between the parties

I. Facts of the case

1. Player J, from country S (hereinafter: *the Claimant*), and Club T, from country K (hereinafter: *the Respondent*), signed an undated employment contract (hereinafter: *the contract*), by means of which its validity is not specified.

2. On 1 February 2009, a supplementary agreement (hereinafter: *the agreement*), was signed by both parties, by means of which its validity is not specified.

3. Clause 1 of the agreement provided that for the season 2009, the Claimant was entitled to the total remuneration of USD 60,000 payable in two equal instalments of USD 15,000 each, being the first instalment due before 15 April 2009 and the second instalment due before 15 August 2009. The remaining remuneration shall be paid in 10 monthly instalments of USD 3,000 each, due by *"no later than the 15th of each month"*.

4. On the same day, a second supplementary agreement (hereinafter: *the second agreement*) without validity specified was concluded and it established, *inter alia*, that the Claimant would be entitled to rent allowance of USD 900, as well as two flight tickets routing *"country S-country K-country S"*.

5. On 21 April 2009, the Claimant lodged a claim before FIFA, against the Respondent for termination of the contract without just cause, and after amending his claim, the Claimant claimed the total amount of USD 64,050 plus 5% interest as of due date, composed as follows:
   - USD 18,900 as outstanding amount according to the first agreement due from 1 February 2009 until 31 July 2009 plus 5% interest of USD 900;
   - USD 15,750 as outstanding amount due on 15 April 2009 as per the agreement plus 5% interest of USD 750;
   - USD 15,750 due on 15 August 2009 also as per the agreement plus 5% interest of USD 750;
   - USD 12,750 as compensation for the residual value of the contract, in which *"USD 750"* is added as 5% interest;
   - USD 900 as rent allowance specified in the second agreement;

   In addition, the Claimant also requested currency of country G 204.70 as translation costs as well as currency of country G 2,411.23 as legal costs.

6. In this respect, the Claimant held that in reliance to the contract, he obtained a visa and had his professional *"playing documents"* sent to country K, but was allegedly informed that the Respondent sought to terminate the contract without just cause and without paying him any monies. A copy of the visa provided by the Claimant was as from 12 February 2009 until 30 July 2009. The Claimant believes that the Respondent found a new replacement and therefore *"decided it no longer wanted"* him.

7. In its reply, the Respondent asserted to have concluded with the Claimant a contract which was neither final nor complete in order to help the Claimant *"obtain a work visa to travel to country K as well as for the club to have an opportunity to request his international transfer certificate"*. Furthermore, the Respondent held that the Claimant presented the first page and the last page of the contract which does not list the remuneration conditions and therefore this proves that the Claimant was not provided with a complete or valid contract by the Respondent. In this respect, the Respondent further affirmed that the Claimant requested *"a little vacation to go home and sort out personal issues"* which was granted, conditioned to his return before 26 February 2009 in order to officially pass the application process with the Respondent, however, that the Claimant did not return.

8. Moreover, the Respondent stated that an agreement (hereinafter: *the third agreement*) was signed by both parties on 18 February 2009, which conditioned the contract's validity and completion to the Claimant's return. The third agreement provided that the *"Club at the instance of Player J gives the vacation without salary for personal problems adjustment in country S. Player J is obliged to arrive to the club's location at the latest on 26.02.2009, for signing full version of the contract, his execution and registration in Football Federation of country K. As well as: In case of nonappearance of Player J in scheduled time the penalty at a rate of 7 000$ (seven thousand US dollars) is imposed on him. In case of employee nonappearance before the final date of the Application (05.03.2009) all earlier signed documents (additional agreement, incomplete contract) will be considered invalid. Club does not carry any financial obligations in the face of employee. Club reserves the right demand indemnity of all financial (payment for aero-ticket, hotel, etc.) and moral costs"*.

9. In his replica, the Claimant maintained that the employment contract is valid and that the remuneration is mentioned in the first and second agreement. In this context, the Claimant alleged that if the contract was not valid, the country K embassy would not have issued for him a working visa, and consequently he would not have had his ITC request accepted and transferred to the country K Football Association.

10. Furthermore, the Claimant affirmed not having signed any other agreement, that is, the third agreement, which would condition the contract's validity to his return or further conditions. In particular, the Claimant questions the fact that the third agreement presented by the Respondent was handwritten, and alleged that the signatures could *"have been lifted from another document"*.

11. Finally, the Claimant asserted that on 12 February 2009, the Respondent's director ordered him to leave the country and specified that they no longer wished his

services. Consequently, he left the country on 24 February 2009 and the Respondent contacted his agent in February 2009 demanding the contractual termination.

12. In its final comments, the Respondent maintained its previous argument, affirming that the third agreement signed by both parties was concluded during a training session and that is why it was not typed.

13. On 24 June 2009, the Claimant signed a contract with the Club B, from country S, valid as from 24 June 2009 for two years and *"shall expire in 2011, as of the first day of summer-winter transfer window of 2011"*. According to the new employment contract's annex, the Claimant was entitled to receive, *inter alia*, EUR 20,000 for season 2009/2010 and EUR 20,000 for season 2010/2011.

II. Considerations of the DRC judge

1. First of all, the DRC judge analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was submitted to FIFA on 21 April 2009. Consequently, the 2008 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. article 21 par. 2 and 3 of the Procedural Rules).

2. Subsequently, the DRC judge referred to art. 3 par. 2 and 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, the DRC judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a country S player and a country K club.

3. Furthermore, the DRC judge analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2012, 2010, 2009 and 2008), and considering that the claim was lodged on 21 April 2009, the 2008 edition of the said regulations is applicable to the matter at hand as to the substance (hereinafter: *the Regulations*).

4. The competence of the DRC judge and the applicable regulations having been established and entering into the substance of the matter, the DRC judge acknowledged the above-mentioned facts as well as the documentation contained in the file.

5. In this regard, the DRC judge noted that the Claimant lodged a claim against the Respondent requesting the payment of a total of USD 64,050 plus 5% interest as due date based on the contract, the agreement and the second agreement as well as a total of currency of country H 2,615.93 for translation and legal costs.

6. In this context, the DRC judge noted that, the Claimant alleged that despite having concluded a valid contract and agreements as well as having been rendered a working visa, the Respondent terminated the contract without just cause and did not pay him any monies.

7. On the other hand, the DRC judge argued that the Respondent rejected the claim of the Claimant, since it never concluded a valid, final or complete employment contract with the Claimant and stated that the latter could not provide sufficient documents in order to prove any contractual relationship.

8. In this context, the DRC judge, first and foremost, focussed its attention on the question as to whether a legally binding employment contract had been concluded by and between the Claimant and the Respondent. In the affirmative, he would have to establish as to whether the relevant employment contract, agreement and second agreement was breached and, if so, which party is to be held liable for breach of contract and which are the consequences thereof.

9. Having stated the aforementioned, the DRC judge wished to highlight that in order for an employment contract to be considered as valid and binding, apart from the signature of both the employer and the employee, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship and the remuneration and additional conditions established between the parties.

10. Consequently, the DRC judge recalled art. 12 par. 3 of the Procedural Rules, which stipulates that any party claiming a right on the basis of an alleged fact shall carry the burden of proof.

11. In this regard, the DRC judge started to carefully analyse the documentations provided by the Claimant in order to prove that a contractual relationship was established between him and the Respondent. In view of this, the DRC judge acknowledged that the contract provided by the Claimant did not specify its validity nor was it complete, since it contained only the first and last page which was signed by both parties.

12. In view of the aforementioned, the DRC judge came to the conclusion that the contract lacked one of the *essentialia negotii*, i.e. the date of signature as well as the specific duration of the employment relationship in order to be considered as a valid employment contract.

13. Furthermore, the DRC judge noted that the Claimant provided an agreement which also did not specify its validity, however, listed that for season 2009 the Claimant would be entitled to a total remuneration of USD 60,000

14. In addition, the DRC judge also noted that a second agreement provided by the Claimant did not specify its validity, however, listed that the Claimant would be entitled to a rent allowance of USD 900 as well as two flight tickets.

15. Moreover, the DRC judge acknowledged that the Respondent provided a third agreement allegedly signed by the parties according to which "*In case of nonappearance of Player J in scheduled time the penalty at a rate of 7 000$ (seven thousand US dollars) is imposed on him. In case of employee nonappearance before the final date of the Application (05.03.2009) all earlier signed documents (additional agreement, incomplete contract) will be considered invalid. Club does not carry any financial obligations in the face of employee. Club reserves the right demand indemnity of all financial (payment for aero-ticket, hotel, etc.) and moral costs".*

16. After careful study of the contract and the agreements presented by the parties, the DRC judge concluded that the essential elements of an employment contract were not included in the pertinent employment contract and agreements. In particular, the DRC judge noted that neither the contract nor the agreements clearly defined the date of entry nor the entire duration of the contract.

17. Moreover, the DRC judge analyzed that the agreement and the second agreement did indeed established the remuneration of the Claimant for the season 2009, however, they failed to establish a valid start and finish date of any possible employment relationship and thus a validity of any possible contractual relationship could not be established.

18. Despite having concluded that the *essentialia negotii* of the contract and the agreements were not present, the DRC judge deemed proper to consider the information provided by the Claimant, who alleged that the country K embassy provided him with a working visa. In this regard, the DRC judge analysed whether the document provided by the Claimant could establish that an employment relationship existed between the parties (cf. art. 12 par. 3 of the Procedural Rules).

19. In this regard, the DRC judge noted that the visa rendered to the Claimant by the country K embassy was valid as from 12 February 2009 until 30 June 2009, however, did not specify if it is a working visa. Instead, it can only be noted from said document that it is a *"Visa"* issued on behalf of the Claimant, without specifying whether it is a working or tourist visa.

20. In view of all the above and recalling the principle of art. 12 par. 3 of the Procedural Rules, the DRC judge concluded that Claimant did not provide enough documentary evidence that an employment relationship had been established.

21. In conclusion, the Chamber decided that, in view of the absence of a breach of contract by the Respondent, the claim of the Claimant clearly lacks ground and thus he is not entitled to any compensation in accordance with art. 17 par. 1 of the Regulations. Therefore, the Chamber decided that the claim of the Claimant must be rejected in its entirety.

22. Finally, the DRC judge decided to reject the Claimant's claim pertaining to legal costs in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber's respective longstanding jurisprudence in this regard.

*****

III. Decision of the DRC Judge

The claim of the Claimant, Player J, is rejected.

*****

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:

Court of Arbitration for Sport
Avenue de Beaumont 2
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 DRC judge

Jérôme Valcke
Secretary General

Encl. CAS directives