

# Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 30 September 2016,

in the following composition:

**Geoff Thompson** (England), Chairman

**Theo van Seggelen** (Netherlands), member

**Jon Newman** (USA), member

**Mario Gallavotti** (Italy), member

**Taku Nomiya** (Japan), member

on the claim presented by the player,

**Player A**, county 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 15 July 2015, the player from country B, Player A (hereinafter: *player* or *Claimant*), and the club from country D, Club C (hereinafter: *club* or *Respondent*), signed an employment contract (hereinafter: *contract*) valid as from 15 July 2015 until expiry of the 2015-2016 season.
2. According to art. 4 of the contract, the parties agreed that "*(4-1) The full amount of the contract is USD425'000 for full season which is agreed between both parties. (4-2) 20% of the full amount will be paid after signing the contract and after passing medical and physical test and obtaining ITC card. (4-3) 80% of the full amount will be paid in ten (10) monthly payments during the season beginning on August 22nd 2015.*"
3. According to art. 7-12 of the contract, if the club does not pay the player's salaries and bonuses for more than 3 months, "*the player may ask Football Federation of country D or FIFA to receive his rights through his manager. In case of make a claim, he should wait for the final vote and the player is not allowed to abandon the club whatsoever.*"
4. According to art. 8 of the contract, the parties agreed that the player would receive USD 1,000 as victory bonus and USD 300 for each goal he scored.
5. On 25 November 2015, the player put the club in default of payment of the amount of USD 92,000, granting the club ten days to pay, and specified that in the absence of payment, he would terminate the contract. In this regard, the player highlighted that the club only paid his monthly remuneration for August 2015 and USD 10,000 in relation to his September 2015 salary.
6. Having received no reply to his default notice, on 11 December 2015, the player sent a notice of termination of contract to the club. In said letter, the player *inter alia* reiterated that until then the club had only paid him USD 44,000 for August and part of September 2015, whereas it should have had paid him 4 monthly salaries.
7. In reply to an email from the club dated 11 December 2015, on 13 December 2015, the player agreed to postpone the termination of the contract and transmitted a settlement offer to the club.
8. On 14 December 2015, the club informed the player that he should wait until the club's board would decide on the offer, since the person indicated as signee for the club was not authorised to sign the offer on behalf of the club.
9. On 3 February 2016, the player reverted to the club in writing maintaining his termination of the contract on 11 December 2015 based on the club's failure to remit part of his September and his full October and November 2015 salaries. The

player further asked the club to remit 2 extra months of salary as payment of damages.

10. On 18 March 2016, the player lodged a claim against the club before FIFA explaining that the club only paid him the 20% in the amount of USD 85,000 (cf. art. 4-2 of the contract) as well as USD 34,000 plus USD 10,000 relating to the months of August and part of September 2015, respectively.
11. In continuation, the player highlighted that when he terminated the contract, the club was late by more than three months in the payment of his remuneration, which gave him just cause to terminate the contract.
12. Additionally, the player stressed that the exchange of correspondence with the club following the contract termination does not challenge the termination of the contract on 11 December 2015. In this regard, the player held that since it appeared that the author of the club's email of 11 December 2015 was not entitled to sign on the club's behalf, this person's email had no legal value.
13. On account of the aforementioned, the player deemed that he had just cause to terminate the contract and that, consequently, the club shall be ordered to pay him outstanding remuneration in the amount of USD 109,500 and compensation for breach of contract in the amount of USD 193,032, composed as follows:
  - USD 24,000 as outstanding part of his remuneration for September 2015;
  - USD 68,000 as outstanding remuneration for the months of October and November 2015;
  - USD 11,000 as outstanding remuneration for the month of December 2015, calculated *prorata temporis*;
  - USD 6,500 corresponding to USD 5,000 for five victory bonuses plus USD 1,500 for three bonuses in relation to goals scored;
  - USD 23,032 as compensation for breach of contract, based on the residual value of December 2015;
  - USD 170,000 as compensation for breach of contract, based on the five monthly salaries left to be paid under the contract until its expiry date.
14. In spite of having been invited to present its position in relation to the player's claim, no response was received from the club within the time limit granted to respond.
15. On 25 February 2016, the player signed an employment contract with the club from country E, Club F, in accordance with which the player was entitled to receive remuneration of 72,000 as from February until May 2016. According to the player, this contract was mutually terminated before its execution started and that he renounced his rights in relation to said contract by means of a "*gentlemen agreement*". In this respect, the player submitted a copy of a statement issued by the club from country E, which *inter alia* reads that after both parties signed the employment contract, they mutually agreed to renounce to register the Claimant.

## 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 18 March 2016. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2015; 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 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 from country B and a club from 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 18 March 2016, the 2015 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, 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 available 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. In particular, the Chamber recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in the Transfer Matching System (TMS).
5. Having said that, the Chamber acknowledged that the parties had signed an employment contract valid as from 15 July 2015 until the expiry of the 2015/2016 sporting season, in accordance with which the Claimant was entitled to receive, *inter alia*, USD 34,000 per month during a period of ten months as from 22 August 2015.
6. In this respect, the Chamber referred to TMS and pointed out that based on the information contained therein, the sporting season 2015/2016 in country G came to an end on 20 May 2016.

7. In continuation, the members of the Chamber took into account that, on 25 November 2015, the Claimant put the Respondent in default of payment of the amount of USD 92,000, corresponding to part of his monthly remuneration for the month of September 2015 as well as his entire monthly remuneration for the months of October and November 2015, and that, on 11 December 2015, having reportedly received no payment or reaction from the Respondent to his default notice, the Claimant notified the club of the termination of the contract on the basis of the alleged outstanding remuneration.
8. Additionally, the Chamber duly noted that after the Claimant and the Respondent apparently sought an amicable resolution of the dispute opposing them, no agreement was reportedly found and that, on 3 February 2016, the Claimant informed the Respondent that he maintained his termination of the contract on 11 December 2015.
9. Consequently, the Claimant held that he had just cause to terminate the contract on 11 December 2015 and claimed that, as a result, the Respondent is liable to pay compensation for breach of contract in addition to the outstanding remuneration.
10. Subsequently, the DRC observed that the reply of the Respondent to the claim was received about three months after the notification of the closure of the investigation of the matter at hand. As a result, in line with art. 9 par. 4 of the Procedural Rules as well as the Chamber's constant jurisprudence in this regard, the DRC decided not to take into account the reply of the Respondent and established that, in accordance with art. 9 par. 3 of the Procedural Rules, it shall take a decision upon the basis of those documents on file that were provided prior to the closure of the investigation-phase, *in casu*, upon the statements and documents presented by the Claimant.
11. Having so found, the members of the Chamber highlighted that the underlying issue in this dispute was to determine as to whether the Claimant had just cause to prematurely terminate the employment contract and to decide on the consequences thereof.
12. Against such background, the Chamber proceeded with an analysis of the circumstances surrounding the present matter, the Claimant's arguments as well the documentation on file, bearing in mind art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.
13. By doing so, the Chamber took into account the Claimant's allegation that the Respondent had failed to pay his monthly remuneration for the months of September, October and November 2015 in the total amount of USD 92,000, which was the motive for the Claimant to terminate the contract on 11 December 2015 after having previously put the Respondent in default.

14. Bearing in mind the consideration under number II./10. above as well as art. 4-3 of the contract, the Chamber established that when the Claimant terminated the contract on 11 December 2015, the Respondent had not paid to the Claimant part of his salary for September 2015, his salary for October 2015 and for November 2015 in the total amount of USD 92,000, all payments of which had fallen due and remained unpaid by the Respondent after having been put in default by the Claimant.
15. On account of the above, and considering that the Respondent had repeatedly and for a significant period of time been in breach of its contractual obligations towards the Claimant, the Chamber decided that the Claimant had just cause to unilaterally terminate the contract on 11 December 2015 and that, as a result, the Respondent is to be held liable for the early termination of the contract with just cause by the Claimant.
16. In the context of the matter at hand, the Chamber wished to highlight that after having terminated the contract on 11 December 2015, the Claimant continued to give the Respondent the chance to remedy the default, to no avail.
17. Prior to dealing with the consequences of the early termination of the employment contract with just cause by the Claimant, the members of the Chamber considered that the Respondent must fulfil its contractual obligations in accordance with the general legal principle of "*pacta sunt servanda*" and pay to the Claimant the amounts which were outstanding under the contract at the moment of the termination of the contract.
18. Accordingly, the Chamber decided that the Respondent is liable to pay to the Claimant the amount of USD 92,000, corresponding to USD 24,000 of the Claimant's salary for the month of September 2015 and his contractual salaries relating to October and November 2015, each in the amount of USD 34,000.
19. However, and with regard to the Claimant's claim pertaining to allegedly outstanding victory/goal bonuses in the amount of USD 6,500, the Chamber referred to art. 12 par. 3 of the Procedural Rules and decided that since the Claimant had not substantiated such claim with documentary evidence demonstrating that the conditions for payment of such bonuses had been fulfilled, this part of the Claimant's claim had to be rejected.
20. In continuation, having established that the Respondent is to be held liable for the termination of the contract with just cause by the Claimant, the Chamber decided that, in accordance with art. 17 par. 1 of the Regulations, the Respondent is liable to pay compensation to the Claimant. Consequently, the Chamber focused its attention on the calculation of the amount of compensation for breach of contract in the case at stake.

21. In doing so, the members of the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
22. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision, by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
23. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body.
24. Having said that, the members of the Chamber turned their attention to the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, which criterion was considered by the Chamber to be essential. The members of the Chamber deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows the Chamber to take into account both the existing contract and the new contract in the calculation of the amount of compensation.
25. In this respect, the Chamber proceeded with the calculation of the monies payable to the Claimant under the terms of the employment contract as from its date of termination with just cause by the Claimant, *i.e.* 11 December 2015, until May 2016 and concluded that the Claimant would have received in total USD 204,000, *i.e.* 6 monthly salaries of USD 34,000 each, as remuneration had the contract been executed until its expiry date. Consequently, the Chamber concluded that the amount of USD 204,000 serves as the basis for the final determination of the compensation for breach of contract in the matter at hand.
26. In continuation, the Chamber verified whether the Claimant had signed an employment contract with another club during the relevant period of time, by means of which he would have been able to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of

compensation for breach of contract in connection with the player's general obligation to mitigate his damages.

27. In this respect, the Chamber took into account that based on the information available in TMS, the Claimant had found new employment with the club from country E, Club F, as from 17 February 2016 until 30 June 2016. Furthermore, the Chamber noted that according to the pertinent employment contract, the Claimant was entitled to a remuneration of 72,000, thus approximately USD 18,000, as from February until May 2016.
28. Regardless of the fact that the Claimant omitted to present evidence corroborating his statement that he renounced his rights under this new employment contract, which apparently was terminated by mutual consent before its execution started, the members of the Chamber deemed it important to point out that by voluntarily agreeing to the early termination of his new employment contract with Club F, the Claimant had actually freely renounced to receive the income relating to the period of time between February 2016 and May 2016. Consequently, the Chamber concurred that the full amount 72,000 under the new employment contract shall be taken into consideration in the calculation of the amount of compensation for breach of contract in the case at hand.
29. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand as well as the Claimant's general obligation to mitigate his damage, the Chamber decided that the Respondent must pay the amount of USD 186,000 to the Claimant as compensation for breach of contract.
30. In continuation, the Chamber focused its attention on the further consequences of the breach of contract in question and, in this respect, addressed the question of sporting sanctions in accordance with art. 17 par. 4 of the Regulations. The cited provision stipulates *inter alia* that, in addition to the obligation to pay compensation, sporting sanctions shall be imposed on a club found to be in breach of contract during the protected period.
31. Subsequently, the members of the Chamber referred to item 7 of the "*Definitions*" section of the Regulations, which stipulates, *inter alia*, that the protected period shall last "*for three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional*". In this respect, the Chamber took note that the termination with just cause of the contract by the Claimant had occurred on 11 December 2015, i.e. almost 5 months following the entry into force of the contract at the basis of the dispute. Therefore, the Chamber concluded that, irrespective of the Claimant's age, the breach of contract by the Respondent had occurred within the protected period.

32. As a result, by virtue of art. 17 par. 4 of the Regulations, the Chamber decided that the Respondent shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision. In this regard, the Chamber emphasised that apart from the Respondent having clearly acted in breach of the contract within the protected period in the present matter, the Respondent had also on several occasions in the recent past been held liable by the Chamber for the early termination of the employment contracts with the players Player H (case. ref. nr. xxxxxxxxxx; decided on 6 November 2014), Player I (case ref. nr. xxxxxxxxxx; decided on 23 July 2015), and Player J (case ref. nr. xxxxxxxxxx; decided on 18 August 2016).
33. The Chamber concluded its deliberations in the present matter by rejecting any further claim lodged by the Claimant.

### **III. Decision of the Dispute Resolution Chamber**

1. The claim of the Claimant, Player A, is partially accepted.
2. The Respondent, Club C, has to pay to the Claimant outstanding remuneration in the amount of USD 92,000, **within 30 days** as from the date of notification of this decision.
3. The Respondent has to pay to the Claimant compensation for breach of contract in the amount of USD 186,000, **within 30 days** as from the date of notification of this decision.
4. In the event that the amounts due to the Claimant in accordance with the above-mentioned numbers III./2. and III./3. are not paid by the Respondent within the stated time limits, interest at the rate of 5% *p.a.* will fall due as of expiry of the aforementioned time limits and the present matter shall be submitted, upon request, to the FIFA 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.

7. The Respondent shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.

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**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  
Avenue de Beaumont 2  
1012 Lausanne  
Switzerland  
Tel: +41 21 613 50 00  
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For the Dispute Resolution Chamber:

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Marco Villiger  
Deputy Secretary General

Encl. CAS directives