Decision of the

Dispute Resolution Chamber

passed in Zurich, Switzerland, on 15 October 2015,

in the following composition:

Geoff Thompson (England), Chairman
Taku Nomiya (Japan), member
Theodore Giannikos (Greece), member
Eirik Monsen (Norway), member
Joaquim Evangelista (Portugal), 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 20 January 2014, the player from country B, Player A (hereinafter: the *Claimant*), and the club from country D, Club C (hereinafter: the *Respondent*), concluded an employment contract (hereinafter: *the contract*), valid as of the date of signature until "*the end of season 2014/2015 or on 30/06/2015 as maximum*".

2. Art. 3 of the contract stipulates the following:
"*Amount of the advance payments and salaries will be as follows: $15,000 should be paid to the original club and $30,000 to* [the Claimant] *once receiving the ITC and passing the medical test, $25,000 at the end of July 2014, $25,000 at the end of February 2015 and $15,000 as monthly salaries from End of January 2014 till End of June 2015*".

3. In addition, art. 9 of the contract states that "[the Claimant] *shall leave the country without permission from* [the Respondent]*. If this happened* [the Respondent] *has to right to the penalty fees from* [the Claimant]".

4. Furthermore, art. 13 of the contract provides that "[the Claimant] *should get Thirty Thousand US Dollars ($30,000) if the* [the Respondent] *terminates this contract due to any reason, and if this contract terminated by* [the Claimant]*,* [the Respondent] *should get seventy five thousand US dollars ($75,000)".*

5. On 31 May 2014, the parties signed a document titled "Final Clearance" which reads as follows:
"*It was agreed between* [the Respondent] *(…) and* [the Claimant] *(…) to terminate the contract between the two parties in the May 31, 2014 and* [the Claimant] *has due salary owed for the month of May 2014 ($ 15,000) in addition to the penalty clause of contract ($ 30,000) and the two sides signed a total Clearance amount of ($ 45,000) which will be paid in 31st July 2014 so* [the Claimant] *is not entitled to claim* [the Respondent] *in any other entitlements after receiving the amount*".

6. On the same date, the parties also signed a document called "Player Clearance" which states the following:
"*It was agreed between* [the Respondent] *and* [the Claimant] *(…) to terminate the contract between the two parties on May 31st 2014 so* [the Claimant] *can be free after this date and can signed to any club*".

7. On 12 September 2014, the Claimant lodged a claim in front of FIFA against the Respondent for breach of contract, requesting to be awarded with the amount of USD 250,000 plus "*5% per annum as from the date in which the payment should be made*", broken down as follows:

- USD 5,000 as outstanding salary for May 2014;
- USD 245,000 as compensation corresponding to the residual value of the contract.

8. In his claim, the Claimant first stresses that art. 13 of the contract lacks of reciprocity. The Claimant further asserts that the Respondent resorted to art. 13 in order to terminate the contract within the protected period and during the course of a season in violation of the FIFA Regulations on the Status and Transfer of Players. In view of the above, the Claimant sustains that art. 13 of the contract as well as the "Final Clearance" should be deemed null and void. Accordingly, and considering that the Respondent only paid USD 10,000 of his salary for May 2014 and did not pay the penalty clause, the Claimant considers that the Respondent should be held liable for breach of contract.

9. Alternatively, and should the DRC not consider the "Final Clearance" null and void, the Claimant requests to be awarded with the amount of USD 80,000 plus "*5% per annum as from the date in which the payment should be made*", broken down as follows:
- USD 5,000 as outstanding remuneration;
- USD 75,000 as penalty clause.

10. In its reply to the Claimant's claim, the Respondent sustains that by signing the "Final Clearance" and the "Player Clearance", the parties mutually and amicably agreed to terminate the contractual relationship. In this respect, the Respondent outlines that in spite of having no obligation to do so since the contract was deemed automatically terminated as per art. 9 of the contract in case the Claimant left the country, it offered him to pay the penalty established in art. 13 of contract as a gesture of good faith.

11. In continuation, the Respondent argues that the Claimant signed the contract and therefore agreed on the validity of art. 13 of the contract, which was established in order to protect him.

12. In continuation, the Respondent asserts that as of the signature of the contract until its mutual termination, *i.e.* 31 May 2014, it paid an amount of USD 151,718 to the Claimant, as follows:
- 5,670, allegedly equivalent to USD 15,000, paid on 21 January 2014 corresponding to the amount to be paid by the Claimant to terminate the contract with his former club;
- 11,340, allegedly equivalent to USD 30,000, paid on 29 January 2014 as "*remainder of the Advance Payment*";
- 5,670, allegedly equivalent to USD 15,000, paid on 3 February 2014 as *"Salary Payment for the month of January"*;
- 5,670, allegedly equivalent to USD 15,000, paid on 8 March 2014 as *"Salary Payment for the month of February"*;

- 2,500, allegedly equivalent to USD 6,614, paid on 10 April 2014 as *"Salary Payment for the month of March"*;
- 3,170, allegedly equivalent to USD 8,386, paid on 29 April 2014 as "*remainder of salary payment for the month of March*";
- 5,670, allegedly equivalent to USD 15,000, paid on 29 April 2014 as *"Salary Payment for the month of April"*;
- 17,613, allegedly equivalent to USD 46,718, corresponding to the "*final Settlement amount paid as agreed in the Financial Clearance Letter*" paid by means of nine Western Union transfers of 1,957 dated 20 July 2014, 26 August 2014, 24 September 2014, 25 September 2014, 27 September 2014, 29 September 2014, 30 September 2014, 1 October 2014 and 2 October 2014 respectively.

13. In his replica, the Claimant alleges not having received seven out of the nine Western Union transfers. In this respect, the Claimant explains that the Respondent should have informed him that it would proceed to the payments through Western Union in order for him to go and cash them. The Claimant further states that it is no longer possible for him to cash them because more than six months have elapsed and that therefore in virtue of the principle "*bis dat qui cito dat*", the Respondent is not released from its obligation to pay him the agreed amounts. Furthermore, the Claimant points out that seven of the transfers were made after he lodged his claim.

14. In continuation, the Claimant explains that in order to invoke the "Final Clearance", the Respondent should have made the payment within the deadline stated, *i.e.* by 31 July 2014, *quod non*, and therefore concludes that the Respondent should be deemed in breach of contract.

15. In spite of having been invited to do so, the Respondent did not submit its final comments.

16. According to the Transfer Matching System (TMS), on 5 August 2014, the Claimant and the club from country B, Club E, signed an employment contract, valid as of the date of signature until 5 November 2014, according to which the Claimant was entitled to receive a monthly salary of 724. Then, on 14 August 2014, the Claimant and the club from country B, Club F entered into an employment contract, valid from 14 August 2014 until 14 November 2014, according to which the Claimant was entitled to a monthly salary of 1,000. Finally, on 19 January 2015, the Claimant concluded a new employment contract with Club F, valid as from the date of signature until 18 April 2015 and entitling him to a monthly salary of 1,000.

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 12 September 2014. Consequently, the 2014 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 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 2015) 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. 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 2015), and considering that the present claim was lodged on 12 September 2014, the 2014 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. 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.

5. In this respect and first of all, the DRC acknowledged that, on 20 January 2014, the Claimant and the Respondent had concluded an employment contract valid as of the date of signature until "*the end of season 2014/2015 or on 30/06/2015 as maximum*".

6. Equally, the Chamber took note that, on 31 May 2014, the parties had signed a "Final Clearance" which reads as follows:

   "*It was agreed between* [the Respondent] *(…) and* [the Claimant] *(…) to terminate the contract between the two parties in the May 31, 2014 and* [the Claimant] *has due salary owed for the month of May 2014 ($ 15,000) in addition to the penalty clause of contract ($ 30,000) and the two sides signed a total Clearance amount of ($ 45,000) which will be paid in 31st July 2014 so* [the Claimant] *is not entitled to claim* [the Respondent] *in any other entitlements after receiving the amount*".

7. In this respect, the Chamber took note that the Claimant asserts that the "Final Clearance" should be deemed null and void on the basis that it rests upon art. 13 of the contract which is itself null and void for lacking of reciprocity. Consequently, the Chamber observed that the Claimant is requesting that the Respondent be held liable for the breach of the contract concluded on 20 January 2014.

8. On the other hand, the Dispute Resolution Chamber took note that, for its part, the Respondent alleges having complied with the obligations assumed as per the "Final Clearance". In particular, the members of the Chamber noticed that the Respondent sustains that it paid the amount of 17,613, allegedly equivalent to USD 46,718, to the Respondent by means of nine Western Union transfers.

9. In this context, the Chamber was eager to emphasise that the Claimant signed the "Final Clearance" without making any reserve. In this respect, and after recalling its longstanding and well-established jurisprudence according to which a party signing a document of legal importance without duly analysing its entire content does so on its own responsibility, the DRC concluded that the Claimant by signing the "Final Clearance" unambiguously agreed on the termination of the contractual relationship in exchange for the payment of the amount of USD 45,000. The Chamber further highlighted that the Claimant signed another document, *i.e.* the "Player Clearance", thereby confirming his wish to put an end to the contractual relationship amicably.

10. In addition, and for the sake of completeness, the Chamber deemed it important to point out that termination of the contract did not result from the application of art. 13 of the contract, but from a mutual agreement of the parties.

11. In view of the foregoing, the Chamber concluded that the contract was mutually terminated on 31 May 2014 and that, therefore, the Respondent could not be held liable for breach of contract. Consequently, the DRC decided to reject the Claimant's claim for compensation with regards to the Respondent's breach of contract without just cause.

12. The members of the Chamber then turned their attention to the execution of the "Final Clearance" and, in particular, to the nine Western Union transfers allegedly made by the Respondent. In doing so, the DRC first recalled the content of 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. In this context, the Chamber noted that the Claimant acknowledged having received two payments, amounting to USD 10,000. As to the other seven Western Union transfers, the members of the Chamber outlined that in accordance with the aforementioned art. 12 par. 3, it was the Respondent's responsibility to demonstrate that the amounts transferred by Western Union were actually paid to the Claimant. In this respect, the Chamber observed that

the documentation presented by the Respondent only evidences that seven Wester Union transfers were ordered between 24 September 2014 and 2 October 2014 but, in no way, proves that the money was received by the Claimant. Accordingly, the Chamber held that the Respondent failed to successfully carry the burden of proof regarding the payment of the remaining amount stipulated in the "Final Clearance".

13. On account of all the above, and in particular bearing in mind that it was undisputed that the Respondent paid an amount of USD 10,000 in accordance with the "Final Clearance", 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 USD 35,000 to the Claimant.

14. In addition, taking into consideration the Claimant's request as well as the provisions of the termination agreement, the Chamber decided that the Claimant is entitled to 5% interest *p.a.* on said amount as of 1 August 2014 until the date of effective payment.

15. Finally, the DRC concluded its 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 partially accepted.

2. 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 USD 35,000 plus 5% interest *p.a.* on said amount as from 1 August 2014 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. Any further claim lodged by the Claimant is rejected.

5. 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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Encl. CAS Directives