

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 26 November 2015,

in the following composition:

Geoff Thompson (England), Chairman
Philippe Diallo (France), member
Mohamed Mecherara (Algeria), member
Leonardo Grosso (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. In June 2014, the Club C from country D (hereinafter: *Club C* or *Respondent*) and the Club E from country B (hereinafter: *Club E*) negotiated on a possible transfer of the Player A from country B (hereinafter: *the player* or *Claimant*), from Club E to Club C.
2. On 27 June 2014, the player, Club C and Club E signed a '*federative transfer agreement*' (hereinafter: *the transfer agreement*). According to this transfer agreement, on 1 July 2014 the player would be transferred from Club E to Club C. Further, according to the transfer agreement, Club C should pay Club E a transfer fee of EUR 400,000, payable in two instalments: (1) EUR 200,000 when the player '*register party A*' (i.e. Club C) and (2) EUR 200,000 '*after 12 months*'.
3. On 27 June 2014, Club C and the player signed a document called '*draft of foreign football player employment contract*' (hereinafter: *the draft contract*), valid as from 1 July 2014 until 30 June 2016.
4. According to the draft contract, the player was *inter alia* entitled to receive:
 - a) EUR 550,000 net for the period of 1 July 2014 until 30 June 2015;
 - b) EUR 550,000 net for the period of 1 July 2015 until 30 June 2016;
 - c) a match bonus of USD 1,000 '*for every league point*'.

Furthermore, the draft contract contains the following clause: '*both Parties will sign official contract after the Party B (i.e. the player) has passed medical examination in country D. The rest of articles and details of official contract will be decided by both Parties through friendly negotiation*'.

5. The player states that he was not invited to sign an official contract with the club after 27 June 2014. Therefore, on 17 July 2014, the player requested Club C for either the signing of '*the final professional football player contract*', or for the payment of EUR 1,100,000 as '*liquidated damages*' as well as to declare that Club C '*resigns from Player's services until 17 July 2014*'.
6. In reply to the request of the player, Club C stated that '*the pre-contract could not be executed*', due to a lack of agreement on the transfer agreement. The player concluded that this point of view of Club C had to be considered as '*an unjust termination of the contractual relationship between the Player and Club C performed by the Defendant*' (i.e. Club C).
7. On 28 July 2014, the player requested Club C to pay him the amount of EUR 1,100,000 as liquidated damages for '*not signing the final contract and the unilateral termination of the contract*'. On 29 July 2014, Club C informed the player

that it would not pay said amount, because it did not reach a transfer agreement with Club E.

8. On 1 August 2014, the player signed a new employment contract with Club E, valid as from 1 August 2014 until 30 June 2016, in accordance with which he was entitled to receive a monthly salary of 30,000 gross. Consequently, the player stated that he will earn the total amount of 494,260 net during the period of 1 August 2014 until 30 June 2016.
9. On 27 August 2014, the player lodged a claim against Club C in front of FIFA, requesting the payment of EUR 1,049,558.81, plus 5% interest, as set out below:
 - a) EUR 1,100,000 as remuneration between 1 July 2014 and 30 June 2016;
 - b) EUR 67,245.37 as prospected bonus remuneration;
 - c) minus EUR 117,686.56 corresponding to the amount that the player would receive for the whole period of the new contract between him and Club E.
10. With respect to the prospected bonus remuneration, the player explains that – based on the results in the preceding season – he expected that Club C would have achieved 90 points in the period of 1 July 2014 until 30 June 2016. According to the player, this would have led to a bonus of (90 points x USD 1,000) = USD 90,000, or approximately EUR 67,245.37.
11. The player states that on 27 June 2014, Club C and Club E signed a valid transfer agreement and that he transferred from Club E to Club C on 1 July 2014. According to the player, the contract between the player and Club E therefore ended.
12. Furthermore, the player states that he concluded a valid employment contract with Club C, since the draft version signed on 27 June 2014 contained all *essentialia negotii*. According to the player, all conditions that needed to be fulfilled in order to conclude a valid employment contract were effectively fulfilled, except from a medical examination. The player argues that this medical examination never took place, because he was never invited by Club C for said medical examination.
13. The player concludes that the point of view of Club C, that no agreement between Club C and Club E on the transfer was concluded and that as a result thereof it would not conclude an official employment contract with the player, has to be considered as a unilateral termination of the contract by the club, without just cause.
14. On 24 March 2015, Club C submitted its position to the claim of the player, asking for the rejection of the claim of the player.

15. According to Club C, in June 2014, it only invited the player to come to country D to discuss a possible employment contract, which was reason for Club C not to apply for a work visa for the player. Further, Club C states that it did not sign an official employment contract with the player, nor that it concluded a valid transfer agreement with Club E. The transfer agreement was never concluded, because of a lack of agreement on the payment dates of the transfer fee and due to the fact that the Football Association of country D did not request the Football Association of country B to issue an ITC.
16. Furthermore, Club C highlights that the draft contract was not an official employment contract, since the signature on the draft contract was not binding on Club C, because said signature belonged to a person, Mr F, who was not entitled to represent Club C. According to Club C, Mr F was '*neither an employee nor an authorized representative of Our Club*'. Equally, according to Club C, the draft contract did neither contain the stamp of the club nor the signature of the '*player agent*', reason why the draft contract cannot be considered valid.
17. In continuation, Club C stated that the draft version of the contract did not contain all the *essentialia negotii*, because no stipulations on the rights of the club and the player on other crucial elements were included in the draft contract. Club C also argues that it wanted the medical examination to take place before the signing of an official employment contract with the player, so it would not violate the Regulations on the Status and Transfer of Players.
18. Club C further states that it never had the intention to dismiss the player, since it had no contractual relationship with him. Club C also refers to the fact that the player on 1 August 2014 signed a new contract with Club E with a value of EUR 117,686.56. However – according to Club C – the player actually never left Club E, because he continued playing at Club E and there was no request for a provisional ITC.
19. With respect to the amount of compensation claimed by the player, Club C states that this amount is not correct. First, the player requested an estimated bonus remuneration of USD 90,000, which is – according to the club - an income that is based on the performance of the player and therefore not an '*absolute*' income. Further, Club C states that it is '*sceptical*' about the correctness of the new income of the player as of 1 August 2014, since the amount is ten times lower than the amount the player could have earned at Club C.
20. Finally, Club C states that the player did not suffer any losses and that he therefore has no right to demand for compensation. For these reasons, Club C requests for the rejection of the claim of the player.

21. Although having been informed by FIFA of the closure of the investigation, on 17 June 2015 the player submitted additional unsolicited comments.

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 27 August 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 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. 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 2015), and considering that the present claim was lodged on 27 August 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, 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.
5. At this stage, the Chamber outlined that it had decided not to consider the player's unsolicited comments of 17 June 2015, as it had been sent after the closure of the investigation phase.
6. In continuation, the members of the Chamber acknowledged that on 27 June 2014 the player and Club C signed the draft contract, in accordance with which the parties agreed that an '*official contract*' would be signed after the player had passed a medical examination in country D.

7. In fact, according to the draft contract, the parties established, among other details, that the employment would last as from 1 July 2014 until 30 June 2016 and that the player would be entitled to receive, *inter alia*, a yearly salary of EUR 550,000 net, match bonuses for every point the club would gain in the season of the reference, as well as housing allowances. The player maintained that, in fact, an employment contract was entered into and that, as such, Club C is to be held liable for its early termination by having failed to execute the terms of the employment contract.
8. In this respect, the members of the Chamber took note of the player's default notices dated 17 July 2014 and 28 July 2014, addressed to Club C, by means of which the player informed the latter that he considered the draft contract signed between the parties to be a valid and binding employment contract and that such contract was not being respected by Club C. The members of the Chamber also took note of Club C's correspondence dated 18 July 2014 and 29 July 2014, addressed to the player, by means of which the former asserted that no employment contract had been concluded between the parties.
9. From the outset, the members of the Chamber highlighted that there does not seem to be any disagreement between the parties as to the fact that the terms of the agreement were not performed. Club C did not contest such allegation made by the player. The fundamental disagreement between the player and Club C – and the central issue to the present dispute – is whether the draft contract signed between the parties established a valid and binding employment contract between the parties.
10. The Chamber noted that according to Club C, as opposed to the player, no legally binding employment contract had come into effect between the player and Club C, as the parties merely signed a "pre-contract" (emphasis added), the object of which was simply to set forth the provisions of a prospective employment contract.
11. Furthermore, Club C stated that the draft contract was not valid, because it did not conclude a valid transfer agreement with Club E, the former club of the player, and also argued that the signature on the draft contract were of a person not authorized to legally represent Club C. In addition, Club C argued that no medical examination had taken place and that the draft contract did not contain the *essentialia negotii*, as a result of which it holds that no legally binding employment contract was concluded with the player.
12. Consequently, the Chamber, first and foremost, focused its attention on the question as to whether a legally binding employment contract had been concluded by and between the player and Club C.

13. In this regard, the Chamber recalled 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 (but not limited to) the parties to the contract and their role, the duration of the employment relationship and the remuneration agreed upon between the parties. After a careful study of the draft contract presented by the player, the members of the Chamber concluded that all such essential elements are included in the pertinent document, in particular, the fact that the contract establishes that the player is entitled to receive remuneration, including a yearly salary and match bonuses, in exchange for his services to the club as a player.
14. The Chamber then reverted to the arguments of Club C relating to the alleged circumstance that the draft contract did not contain the stamp of the club and the signature of the player's agent, as well as that the draft contract had been signed on behalf of Club C by a non-authorized person, and that as a result of the aforementioned circumstances, the draft contract dated 27 June 2014 has no legal effect.
15. In this respect, the members of the Chamber decided that such argumentation cannot be upheld due to the fact that the player was in good faith to believe that the person signing the relevant agreement on behalf of Club C was legally authorized to sign it on behalf of Club C. In this regard, the Chamber wished to outline that the relevant contract was drafted on the letterhead of the club and that the club never put forward any explanation how Mr F had obtained a copy of said document. What is more, in accordance with the principle of the burden of proof, the DRC outlined that Club C never provided documentary evidence demonstrating that the player was aware - at the moment of signing the pertinent agreement - of the alleged situation outlined by Club C. Furthermore, the members of the DRC underlined the fact that the validity of an employment contract is not dependent on the fact whether or not the agent of the player signed the document, and/or the question whether the stamp of the club is on the document.
16. In continuation, the Chamber turned to the argument put forward by Club C that no valid employment agreement was concluded between the parties, since it did not reach a valid transfer agreement with the former club of the player, Club E, and the fact that no ITC for the transfer of the player was requested, as a result of which – according to Club C - the player was not transferred to Club C.
17. In this regard, bearing in mind art. 18 par. 4 of the Regulations, the Chamber considered relevant to recall its jurisprudence in accordance with which the validity of an employment contract cannot be made conditional upon the execution of (administrative) formalities, such as, but not limited to, the registration procedure in connection with the international transfer of a player, which are of the sole

responsibility of a club and on which a player has no influence. As regards the case at stake, Club C argued that no ITC was requested. Bearing in mind that according to Annexe 3 of the Regulations an ITC request depends on the new club's application to the new association to register a professional, Club C is actually in the position to prevent the occurrence of the condition precedent of receipt of an ITC by willfully choosing not to proceed with the application for an ITC request. Further, the Chamber observed that the contract dated 27 June 2014 was not made conditional upon the conclusion of a transfer agreement between Club E and Club C. For these reasons, the members of the Chamber decided to reject Club C's arguments in this regard.

18. Subsequently, the members of the Chamber turned to Club C's argument that according to the draft contract, the signing of the official contract would only take place after a medical examination in country D would have been passed. In this respect, according to Club C, it follows from said stipulation that the draft contract was not the official employment contract and that it can be assumed that Club C did not violate article 18 par. 4 of the Regulations, since it had set the medical examination as a prerequisite of signing an official employment contract with the player.
19. In this framework, the members of the Chamber highlighted once more the fact that the draft contract itself contains the *essentialia negotii*, making it a valid employment contract. Further, the fact that the parties allegedly agreed that a medical examination would take place before signing an additional document, cannot lead to the conclusion that the draft contract was not a valid and binding employment contract. Having said that, the members of the Chamber further referred to art. 18 par. 4 of the Regulations which stipulates that "*the validity of a contract may not be made subject to a positive medical examination and/or the granting of a work permit*". The fact that the draft contract contained a clause stipulating that a medical examination would take place, is therefore of no influence in the present matter and would not affect the validity and enforceability of the draft contract signed by Club C and the player. As a result of the aforementioned circumstances, the members of the Chamber decided to also reject Club C's arguments in this regard.
20. On account of all of the above, the members of the Chamber concluded that by having signed the contract dated 27 June 2014, a valid and legally binding employment contract had been entered into by and between the player and Club C on 27 June 2014.
21. Having established that a valid and legally binding employment contract had been in force between the player and Club C, the Chamber went on to analyse as to whether such contract had been breached and, in the affirmative, which party is to be held liable for breach of contract.

22. To this end, the Chamber was eager to emphasize that Club C did not contest that it had not performed any of its obligations under the employment contract and that, in fact, it merely disputed the legal validity of such contract. In fact, the Chamber took into account that Club C had informed the player that it did not intend to perform the contract as it did not consider the employment contract to be valid.
23. On account of the above circumstances, the Chamber established that Club C had obviously no longer been interested in the player's services by sustaining that no valid employment contract existed between the parties. The Chamber concluded that such conduct clearly constitutes a breach of contract and, accordingly, decided that Club C terminated the employment contract entered into between the parties without just cause.
24. Having established that Club C is to be held liable for the early termination of the employment contract without just cause, the Chamber focused its attention on the consequences of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the player is entitled to receive from Club C an amount of money as compensation for breach of contract.
25. In continuation, the Chamber focused its attention on the calculation of the amount of compensation for breach of contract in the case at stake. 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.
26. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contains 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.
27. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract until 30 June 2016 and concluded that the player would have received in total EUR 1,100,000 as salaries had the contract been executed until its expiry date. As

regards the player's claim relating to the estimated loss of USD 90,000 for bonuses relating to the 2014/2015 and 2015/2016 season, the members of the Chamber stressed that the payment and the amount of such bonuses are linked to matches to be played in the future, *i.e.* after the termination of the relevant contract, and, therefore, are fully hypothetical. Consequently, the Chamber decided not to include these amounts for the calculation of the amount of compensation.

28. In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled 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.
29. The Chamber noted that, on 1 August 2014, the player had already signed a new employment contract with his former club (Club E) and that, from that date and until 30 June 2016, he was entitled to an income of (approximately) EUR 118,000 during said period of time.
30. The Chamber further referred to its constant practice and the general obligation to mitigate damages and considered it important to point out that, although the employment contract was fully valid and enforceable, the execution of the contract had never started. The Chamber deemed that such circumstance should be taken into consideration in the calculation of the amount of compensation for breach of contract.
31. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that Club C must pay the amount of EUR 330,000 to the player as compensation for breach of contract.
32. In addition, taking into account the player's request, the Chamber decided that Club C must pay to the player interest of 5% *p.a.* on the amount of compensation as of the date on which the claim was lodged, *i.e.* 27 August 2014, until the date of effective payment.
33. The Chamber concluded its deliberations in the present matter by establishing that any further claims lodged by the player are 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, compensation for breach of contract in the amount of EUR 330,000 plus 5% interest *p.a.* on said amount as from 27 August 2014 until the date of effective payment.
3. In the event that the amount due to the Claimant in accordance with the above-mentioned number 2. is not paid by the Respondent 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 remittances are 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:

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 Dispute Resolution Chamber:

Markus Kattner
Acting Secretary General

Encl: CAS directives