

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 9 November 2004,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Philippe Piat (France), member

Philippe Diallo (France), member

on the claim presented by

Player X, Poland

as Claimant

against

Y, Greece

as Respondent

regarding a contractual dispute between the parties involved

Facts of the case:

- On 29 May 2003 an employment contract was concluded between the player X and the Greek club Y for 2 years, with an option for real for 1 more year, stipulating the following financial conditions:
 - a salary of EUR 1,300 net a month;
 - bonuses for every game, according to internal regulations;
 - a bonus of EUR 10,000 if the team participates in the UEFA Cup;
 - a signing-on fee of EUR 120,000 to be paid: EUR 30,000 upon signature, the remaining amount in 5 equal instalments of EUR 18 000 each on 30/9/2003, 30/11/2003, 30/1/2004, 30/03/2004, and 30/4/2004.
- On 05.01.2004 the player approached FIFA claiming several salary payments, as well as an amount of EUR 18,000 (the instalment of the signing-on fee due on 30.11.2003)
- He claimed that the club had approached him, offering EUR 20,000 as a settlement for the cancellation of the contract, but that he refused this offer.
- The player is presently still claiming the following amounts:
 1. His salary (EUR 1,300 per month) for October until December 2003, and January until June 2004, that is a total of EUR 11,700;
 2. The value of his employment contract for the next (2004/2005) season, that is an amount of EUR 130,000;
 3. A total of EUR 72,000 for the instalments of his signing-on fee due up until 30.04.2004;
 4. EUR 10,000 bonus for qualifying for the UEFA Cup;
- Upon being questioned with respect to the player's allegations, Y has presented several arguments:
- Mr. X has committed severe disciplinary offences due to his absences from training sessions in January 2004, as a result of which he was suspended for a period of 2 months from 11.01.2004 until 11.03.2004.
- Although there has been some delay in the payments of the player's salaries, this is due to the financial difficulties faced by the club and does not mean that the club has not been respecting the contract;
- Due to these reasons, the club concludes that it has terminated the contract with just cause and that it does not owe the player any remuneration whatsoever.
- Since the club was unable to present any sort of proof of having paid the player his salaries for the months of October 2003 until December 2003, FIFA provisionally liberated the player from all contractual duties towards Y and was authorized to sign with the club of his election, on 1 March 2004. The player is currently under contract with a Polish club.
- The present case has been dealt with by the Greek League Committee for Resolution of the Financial Disputes, which has decided on 18 March 2004 to terminate the player's contract with the club as of 26 February 2004 through fault of the player. The Appeal Committee of the Greek League then ruled on 6 April 2004 that there was insufficient evidence of any action of the player contrary to his contractual obligations and that therefore it was not proven that he had been responsible for breaches of his contract.
- The Dispute Resolution Chamber is asked to take a formal decision concerning the financial compensation due to be paid to the claimant, if any.

Considerations of the Dispute Resolution Chamber

The Dispute Resolution Chamber of the FIFA Players' Status Committee shall review disputes coming under its jurisdiction pursuant to Art. 42 of the FIFA Regulations for the Status and Transfer of Players (hereafter: FIFA Regulations) at the request of one of the parties to the dispute.

According to Art. 42 of the FIFA Regulations for the Status and Transfer of Players, the triggering elements of the dispute (i.e. whether a contract was breached, with or without just cause, or sporting just cause), will be decided by the Dispute Resolution Chamber of the FIFA Players' Status Committee.

Consequently, the Dispute Resolution Chamber is the competent body to decide on the present litigation concerning the alleged breach of contract between the claimant and the respondent.

The members of the Dispute Resolution Chamber were summoned to pass a decision on this matter by the Chairman pursuant to Art. 1 point 6) of the Rules Governing the Practice and Procedures of the Dispute Resolution Chamber.

Subsequently, and entering into the substance of the matter, the Chamber began its deliberations by analyzing the defence of the respondent.

To begin with, the members pointed out that essentially the dispute revolves around the non-payment of several months of the player's salaries, as well as certain signing-on and bonus fees.

The defence of the respondent is primarily based on three main issues: the financial difficulties faced by the club, the disciplinary offences committed by the player, and the decisions taken by the Greek Athletic Courts.

The defence does not include any documentary or other kind of payment proof regarding the amounts that are yet outstanding, although the respondent has been given several opportunities throughout these procedures to do so.

The Chamber took serious note of the club's argumentation that its financially precarious situation validates the delays concerning some of its contractual obligations towards the claimant.

On the other hand, it was also clear to the members that the claimant has not obtained his dues in accordance with his employment contract, nor within the time schedule foreseen therein.

In this respect the members mentioned that the player had repeatedly faced uncertainty as to whether or not he would be receiving the financial income that he was relying on or got no

payments at all. This situation need not be tolerated by the player and constitutes a breach of the club's contractual duties, whether it can be excused by financial difficulties or not.

In continuation, the members of the Dispute Resolution Chamber acknowledged that the player may have committed disciplinary infractions during his participation in the matches played for the club, and that these acts may be punishable in accordance with the applicable disciplinary rules and regulations of the club and/or the national association concerned. Nevertheless, this cannot justify the non-payment of a player's salaries without a final and binding decision to this effect by a deciding body with competence to impose such disciplinary sanctions, or without such decision being proportionate to the offence committed. In the case at hand, the Chamber noted, neither of these prerequisites have been met.

Finally, the Dispute Resolution Chamber pointed out that the decisions taken by the Greek Athletic Courts might have been favourable to the respondent in the first instance, but that the main decision to be taken into account should always be the final decision that is no longer open to appeal. In this case that would be the decision taken by the Appeal Committee of the Greek League which ruled on 6 April 2004 that there was insufficient evidence of any action of the player contrary to his contractual obligations and that therefore it was not proven that he had been responsible for breaches of his contract.

In view of all the aforementioned circumstances, the Dispute Resolution Chamber concluded by deciding that the arguments of the respondent could not disprove the allegations put forward by the claimant and that therefore a damage compensation was due for the breach of contract as a result of non-payment of the player's dues.

Considering that the player was authorised to depart from the club on 1 March 2004, the respondent shall pay his outstanding salaries until that date, that is, for the months of October 2003 throughout February 2004, totalling EUR 6'500, as well as the outstanding instalments of the signing-on fees that have fallen due before 1 March 2004 (EUR 54'000), and the UEFA Cup bonus explicitly mentioned in the employment contract (EUR 10'000). Hence, the total amount due amounts to EUR 70'500.

Furthermore, the Chamber emphasised that the Greek club has to be sanctioned for contractual breach, according to Art. 23 par. 2 lit. a) of the Regulations for the Status and Transfer of Players, which states that in the case of the club breaching a contract, the sanction shall be a ban on registering any player, either nationally or internationally, until the expiry of the second transfer period following the date on which the breach became effective. This restriction shall nevertheless not exceed a period of 12 months following the breach or inducement of the breach.

Decision of the Dispute Resolution Chamber

1. The claim lodged by the Claimant is accepted.
2. The Respondent shall pay the amount of **EUR 70'500** to the Claimant, within 30 days following the date of the communication of the present decision.
3. In the event that the debts of the Respondent are not paid within the stated deadline, an interest rate of 5% per year will apply.
4. In addition to point 3., the sports sanction for unilateral breach of contract will be applied as mentioned in art. 23.2(a) of the FIFA Regulations for the Status and Transfer of Players, that is, a ban on registering any player, either nationally or internationally, until the expiry of the second transfer period following the date on which the breach became effective.
5. According to art. 60 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 10 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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For the Dispute Resolution Chamber:

Urs Linsi
General Secretary

Encl.