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Decision of the

Dispute Resolution Chamber

passed in Zurich, Switzerland, on 18 December 2012,

in the following composition:

Geoff Thompson (England), Chairman
Theo van Seggelen (Netherlands), member
Philippe Diallo (France), member

on the claim presented by the player,

Player S, from country B

as *Claimant*

against the club,

Club M, country R

as *Respondent*

regarding an employment-related dispute arisen between the parties

I. Facts of the case

1. On 15 June 2010, Player S, from country B (hereinafter: *Claimant*) lodged a claim against Club M, from country R (hereinafter: *Respondent*) in front of FIFA, maintaining that, on 8 April 2010, he concluded an employment contract with the Respondent valid from 8 April 2010 until 30 November 2012, under which the Respondent allegedly undertook to pay the Claimant a monthly salary of EUR 38,300 for the term of the contract. In order to support his claim, the Claimant submitted a copy of the alleged contract signed only by him.

2. In addition, the Claimant submitted a document named "Declaration", dated 8 April 2010, bearing only one signature just over the typed name of the Respondent. Said document, *inter alia*, stipulates that the Respondent undertakes to respect a three year/season contract with the Claimant, and indicates that such contract had been signed yesterday on the 7th April in country R language and that it has started the day before and shall expire on the 30th November 2012. It further specifies, *inter alia*, the parties as well as the remuneration. Further, according to the "Declaration", the Claimant was to receive an annual salary amounting to Euro 400,000 paid as follows: an advance payment of EUR 80,000 and the remaining yearly salary, ie EUR 320,000, split in equal monthly instalments.

3. According to the Claimant, his International Transfer Certificate (ITC) was requested by the Football Union of country R on 8 April 2010 and issued by the country P Football Federation on 13 April 2010, following which he made himself available to the Respondent at the beginning of April 2010 to start work. Once in country P, the Claimant asserted that he took part in all of the Respondent's training sessions and claimed that he was even summoned to participate in the official match against Club N scheduled for 6 May 2010 in country R. However, the Claimant reported that in the early hours of 6 May 2010 he was allegedly forced to leave the hotel, where the Respondent's team was staying ahead of the said match, taken to the airport and provided with a plane ticket country R-country P scheduled to departure at 5:30 am, on 6 May 2010. The Claimant stated that he was not given any explanations as to the reason for his sudden departure.

4. Subsequently, once in country P, the Claimant sought clarification from the Respondent through a letter sent by his lawyer to the Respondent on 7 May 2010. In the letter, it was stressed that there was a contract in place and that the Claimant intended to fulfill his obligations thereunder. Similarly, the Respondent was asked whether it intended to honor the contract. However, according to the Claimant, the letter remained unanswered. Therefore, a week later, on 14 May 2010, the Claimant sent another letter along the same lines. This letter set 21 May 2010 as the deadline for the Respondent to confirm that the Claimant would be reinstated and the

contract enforced. A failure to do this, the letter warned, would result in the Claimant unilaterally terminating the contract without further notice and seeking redress before the competent bodies. The Claimant stated that the letter of 14 May 2010 also remained unanswered. In addition, the Claimant reported in his claim that the Respondent had not paid any salary instalments. The Claimant stated that as a consequence he gave notice of termination on 24 May 2010.

5. In view of the above, the Claimant claims that the Respondent had unilaterally terminated the contract without just cause and that, as a result, the Respondent shall be liable for damages and compensation due to its breach of the contract. Therefore, the Claimant is asking the Dispute Resolution Chamber (DRC): i) to award him compensation amounting to EUR 1,225,600 for financial, moral and sporting damages suffered by the Claimant as a consequence of the unlawful termination by the Respondent; ii) to order the Respondent to return the personal belongings of the Claimant (left at the Claimant's former place of residence in country R); and iii) to declare the breach without just cause by the Respondent as well as the ensuing legal termination of the contract by the Claimant.

6. In reply to the claim, the Respondent provided a different account of the facts. According to the Respondent, on 7 April 2010, the Claimant's representative, Mr J, approached the Respondent with a proposal to transfer the Claimant from Club Q to the Respondent. In response, the Respondent made the continuation of negotiations dependent on a number of requirements being met, namely the successful passing of a medical examination and the completion of the transfer before the closing of the winter registration period in country R, ie 8 April 2010.

7. In this respect, the Respondent stated that the Claimant underwent a medical examination on 8 April 2010 in country G, but that the results were unsatisfactory. Also, the Respondent underlined that no contract was signed and no ITC was requested "during the period till 08.04.2010", in the Respondent's own words, and therefore the Claimant was not registered to participate with the Respondent in the Championship of country R. The Respondent claimed that the Claimant's representative was duly informed of the Respondent's decision. Notwithstanding this, on 23 April 2010, the Claimant and Mr J unexpectedly arrived in country R. Three days later, Mr J left while the Claimant stayed in country R. Being things so, the Respondent indicated it "naturally" allowed the Claimant to train with the team, so that he could keep fit, as well as to use the canteen while warning the Claimant that there was no employment relationship in place and that he should return to country P. Faced with the Claimant's passivity, the Respondent booked a flight country R-country P scheduled on 6 May 2010. On 5 May 2010, the team flew charter to country R for its match against Club N and the Claimant was invited to fly to country R as there were no direct flights country R-country P. Once in country R, a member of the Respondent's staff took the Claimant to the airport.

8. The Respondent therefore dismissed as a lie the accusations of violent conduct against the Claimant. At the same time, the Respondent admitted that some of the Claimant's belongings were left behind in the hotel room and that they had been stored and could be sent to the Claimant as soon as an address was provided.

9. Also, the Respondent stated that it did reply, on 26 May 2010, to the Claimant's correspondence, by means of a letter which, inter alia, stipulated that "*in addition of the preliminary agreements the ITC was not sent out of Football Federation of country P to the country R Football Union till 08.04.2010 -the last day of the registration period of country R*". In addition, the Respondent requested in its reply that the authenticity of the documents provided by the Claimant along with his claim be verified as, according to the Respondent, it did not sign an employment contract with the Claimant. In particular, the Respondent asserted that the signature and seal in the document named "Declaration" had been forged.

10. In conclusion, the Respondent requested that the Claimant's claim for compensation be dismissed on the basis that there was not a contract in place between the parties.

11. In his replica, the Claimant addressed each and every one of the allegations of the Respondent as follows: i) the Claimant reiterated that the request and issuance of an ITC sufficed to prove that there exists a valid contract signed between the parties and referred in support of his claim to art. 8 and art. 2 par. 1 of Annexe 3 of the Regulations on the Status and Transfer of Players (hereinafter: the Regulations); ii) the Claimant stated again that the parties had signed the contract, rejected that the signature of the "Declaration" had been forged and asserted that the Respondent's letter of 26 May 2010, allegedly sent to the Claimant, supported this claim in that it made reference to "preliminary agreements". Also, even if the contract was never signed or the signature of the "Declaration" was forged, the Claimant argued that the validity of an employment contract is not limited to a signed version, i.e. oral agreements are equally valid; iii) the Claimant stressed that the requirement according to which the transfer had to be completed before the closing of the winter registration period in country R, ie 8 April 2010, had been met because the ITC had been requested on that date; v) regarding the Claimant's failure to successfully pass the medical examination, the Claimant maintained that the Respondent's claim as to the unsuitability of the Claimant due to his unfitness following a knee joint operation is not proven, and outlined that such a claim is against art. 18 par. 4 of the 2009 edition of the Regulations.

12. In its duplica, the Respondent reiterated that the document named "Declaration" is counterfeit and that the employment contract was never signed by the Respondent. Further, the Respondent admitted having asked the country R Football Union to request an ITC, but it did so because the transfer window in country R was coming

to an end on 8 April 2010 and not because a contract with the Claimant had been signed. As a matter of fact, the Respondent stated that upon the ITC request to the country R Football Association, no contract was submitted but it only named the alleged date of contract, which had not been signed yet. Also, the Respondent outlined that the successful passing of the medical examination was a pre-condition to enter into an agreement and not a condition upon which the validity of the contract was made dependent.

13. Therefore, regarding the compensation requested by the Claimant, according to the Respondent, none could result from the alleged termination without just cause by the Respondent, because no contract had been signed and thus there was no contract in place.

14. Lastly, after having been requested by FIFA to provide the original version of the document named "Declaration", the Claimant vehemently rejected the accusation of forgery and informed FIFA that he was not in possession of such original version, because he was never provided with one by the Respondent. In addition, the Claimant asked FIFA to access the Transfer Matching System (TMS) since, in the Claimant's view, the contract must have been submitted together with the ITC request.

15. Upon request, the player informed FIFA that, following the termination of his contract with the club, he had been under contract with the following clubs:
    a. Club V (country P), between 1 July 2010 and 17 February 2012, in exchange for a gross monthly salary amounting to EUR 20,206.50 during the 2010-2011 season and EUR 21,681.20 during the 2011-2012 season; and
    b. Club P (country P), from 14 August 2012 to 30 June 2013 in exchange for a gross monthly salary of EUR 2,454.

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 15 June 2010. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. article 21 par. 2 and 3 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 2012) the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns a dispute with an international dimension between a country B player and a country R club in relation to an alleged employment relationship between the two aforementioned parties, invoked by the Claimant.

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 (editions 2009, 2010 and 2012), and considering that the present claim was lodged on 15 June 2010, the 2009 version 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 doing so, the members of the Chamber started by acknowledging that, according to the Claimant, he had, on 8 April 2010, concluded with the Respondent an employment contract valid from 8 April 2010 until 30 November 2012, in accordance with which the Respondent allegedly had undertaken to pay him the total amount of EUR 1,225,600, ie 32 monthly salaries of EUR 38,300 each. Further, the Chamber also took note of the Claimant's allegations according to which the Respondent had *de facto* terminated the alleged contractual relationship by forcing the Claimant to leave country R, on a plane bound for country P, on 6 May 2010. Therefore, the Claimant asked to be awarded, inter alia, compensation for breach of contract by the Respondent in the amount of EUR 1,225,600 for the financial, moral and sporting damages suffered.

5. The DRC furthermore took due note of the fact that the Respondent, on its part, had categorically denied the conclusion of an employment contract with the Claimant. In this regard, the Chamber observed that whereas the Respondent had admitted that the Claimant's representative, Mr J, approached the Respondent with a proposal to transfer the Claimant from Club Q to the Respondent, the latter had made the continuation of negotiations dependent on a number of requirements being met, namely the successful passing of a medical examination and the completion of the transfer before the closing of the winter registration period in country R, ie 8 April 2010. However, the Respondent declared that finally no employment contract had been concluded due to the unsatisfactory results of the medical examination underwent on 8 April 2010, that did not meet the Respondent's requirements.

6. In view of this dissent between the parties in respect of the basic question as to whether or not an employment contract between them had been concluded, the members of the Chamber firstly referred to art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. The application of the said principle in the present matter led the members of the Dispute Resolution Chamber to conclude that it was for to the Claimant to prove that the employment contract, on the basis of which he claims compensation for breach of contract from the Respondent, indeed existed.

7. Having stated the above, the DRC recalled that the Claimant maintained that he never received a copy duly signed by both parties of the employment contract he asserts having signed with the Respondent. However, the Claimant had submitted a document in support of his claim which was in continuation examined by the members of the Chamber.

8. Firstly, the DRC deemed it important to highlight that, in order for an employment contract to be considered as valid and binding, it must bear the signature of both the employer and the employee. In this respect, the DRC observed that the Claimant was unable to provide the Chamber with a copy of the employment contract duly signed by both the player and the club.

9. Furthermore, the Chamber took note of the document named "Declaration", dated 8 April 2010, bearing only one signature just over the typed name of the Respondent. In this regard, and given that the Claimant had been unable to produce an executed copy of the alleged employment contract between the parties, the Chamber noted that the core element of the present dispute is to examine whether or not the said "Declaration", regarded by the Claimant as a preliminary agreement and proof of the subsequent conclusion of an employment contract, can indeed establish the existence of an employment relationship between the club and the player.

10. As to the content of the "Declaration", the DRC noted that not only the payment scheme but also the overall remuneration set out in the "Declaration" differs from that provided for in the contract (cf. point I/par. 1 and 2).

11. At this stage, the DRC considered appropriate to remark that since each party has a completely antagonistic position in this respect, this Chamber is not in a position to consider and decide on the present case without first of all being clarified the issue of the authenticity of the "Declaration" dated 8 April 2010. In this respect, the DRC took into account that the Respondent is contesting the authenticity of the "Declaration" dated 8 April 2010.

12. Furthermore, the Chamber observed that the Claimant, having been requested by FIFA to provide the original version of the document named "Declaration", informed FIFA that he was not in possession of such original version, because he was never provided with one by the Respondent.

13. In addition and in relation to the Claimant's request to access the information contained in the TMS, the Chamber outlined that the provisions related to the TMS only entered into force on 1 October 2010, ie when the 2010 edition of the Regulations came into force. Considering that the present matter revolves around facts occurred prior to 1 October 2010 and that the use of TMS became mandatory as from 1 October 2010 only, the Chamber emphasised that there was no regulatory basis for it to examine any information contained in the TMS.

14. In view of all the aforementioned, taking into account the arguments raised by the Respondent as well as taking into account that the Claimant could not provide the original version of the "Declaration", the Chamber decided that this document could not be considered.

15. Having duly taken note of the aforementioned documentation presented by the Respondent and the Claimant, the members of the Chamber held that in order for the Chamber to be able to assume that the Claimant and the Respondent had indeed been bound through a contractual relationship with the terms as described by the Claimant, it had to be established, beyond doubt, by documentary evidence, that the said parties had indeed entered into a respective labour agreement, and, if so, under which terms. In general, the members of the Chamber held that they could not assume that an employment contract had been concluded by and between parties simply based on circumstances which, in general, may be likely but are not certain to indicate the signing of a contract. In addition, the members of the Chamber agreed that the Dispute Resolution Chamber must be very careful with accepting documents, other than the employment contract, as evidence for the conclusion of a contract.

16. In respect of the foregoing, the members of the Chamber had to conclude that the documents presented by the Claimant did not prove beyond doubt that the Respondent and the Claimant had validly entered into an employment contract.

17. As a consequence, the DRC decided that, since the Claimant had not been able to prove beyond doubt that an employment contract had validly been concluded between himself and the Respondent, there was no possibility for the Chamber to enter into the question whether or not such alleged employment contract had been breached.

18. All the above led the DRC to conclude that the claim of the Claimant has to be rejected.

III. Decision of the Dispute Resolution Chamber

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

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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
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Tel: +41 21 613 50 00
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For the Dispute Resolution Chamber:

Markus Kattner
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Encl. CAS directives