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 club,

Club T, from country C

as *Claimant*

against the player,

Player K, from country C

as *Respondent 1*

and the club

Club A, from country Q

as Respondent 2

regarding an employment-related dispute between the parties

I. Facts of the case

1. On 1 July 2011, the player K (hereinafter: *the player or Respondent 1*), born in January 1987, concluded an employment contract with the Club A, from country Q (hereinafter: *the Respondent 2*), for a three season period expiring on 14 July 2014.

2. On 9 August 2011, FIFA informed the country Q Football Association of the possible consequences should the player be found in breach of the contract he had apparently concluded with the Club T, from country C (hereinafter: *the Claimant*).

3. Following the rejection of the country C Football Federation to the relevant request of the country Q Football Association for delivery of the International Transfer Certificate (ITC) for the player, the Single Judge of the Players' Status Committee authorised the provisional registration of the player with the Respondent 2, by means of a decision dated 6 September 2011 and notified to the parties on 7 September 2011.

4. On 28 September 2011, the Claimant lodged a claim against the player for breach of contract without just cause, in particular, for having concluded a new employment contract with the Respondent 2 without notifying it of the termination of their alleged contractual relationship and without the prior conclusion of a transfer contract between the two clubs concerned.

5. The Claimant requests the Respondent 1 and the Respondent 2 to be declared jointly liable to the payment of EUR 5,000,000 as compensation for breach of contract. Furthermore, arguing that the relevant contract was breached within the protected period, the club also requests the imposition of a suspension for a minimum of four months on the player and a ban from registering any new players for two consecutive registration periods on the Respondent 2. In this regard, the Claimant also states that the breach occurred during the season, alleging that it ended in October 2011.

6. In this respect, the Claimant provided the copy of an employment contract (hereinafter : *the contract*), dated 2 February 2009. The duration of the employment relationship according to this document is of 5 years as of the date of signature and the remuneration due to the player according to the contract is as follows:
    a. a monthly salary of USD 4,000;
    b. a sign-on fee of USD 25,000 due prior to the signature of the contract.

7. With regard to the remuneration due to the Respondent 1, the Claimant explains that the player's monthly salary was raised to USD 10,000 in August 2010 and to USD 15,000 in November 2010, that it paid various other bonuses to the player and that it fulfilled all its contractual obligations towards him.

8. In relation to the foregoing, the Claimant provided the originals of payment slips dated January, February and April 2011, each for an amount of USD 15,000, as well as a payment slip dated 30 November 2010 indicating *''salary supplement''* for USD 6,000.

9. With respect to the amount of compensation requested, the Claimant maintains that the entire remuneration due to the player until the term of the contract should be taken into consideration. Moreover, the Claimant claims that it suffered a damage by not being able to sell the player to Club R which had apparently offered the amount of EUR 5,000,000 for the transfer of the player on 24 January 2011, as per the relevant letter from Club R which was adduced to the claim.

10. In response, the Respondent 1 requests the claim to be dismissed. In particular, the Respondent 1 maintains that he never signed a written employment contract with the Claimant and insists that his signature featuring on the copy of the contract provided by the Claimant was forged. In this respect, the player specifies that he provided his services to the club, from February 2009 until June 2011, based on a verbal agreement. Thus, the Respondent 1 argues that he was not contractually bound to the club and, therefore, that he was free to sign for the club of his choice at any time.

11. Nevertheless, in the event that the contract is deemed valid, the Respondent 1 is of the opinion that the amount of EUR 5,000,000 requested as compensation cannot be granted since it refers to a mere offer made by Club R, which cannot be taken into consideration. The only amount that he could be sanctioned to pay as compensation is the residual value of the contract which amounts to USD 132,000.

12. Furthermore, the Respondent 1 also contests FIFA's competence to adjudicate in the matter at hand arguing that the matter lacks an international dimension since the Respondent 1 and the Claimant are both from country C and because the deciding bodies of FIFA are not competent to decide on the authenticity of the player's signature on the contract, which must be decided by the competent authority in country C.

13. The Respondent 2 responds to the claim by insisting that before concluding an employment contract with the Respondent 1 it was allegedly informed verbally and in writing by the Respondent 1 that he was registered as an amateur with the Claimant and had no contract with the club. Moreover, the Respondent 2 claims that despite the conclusion of the contract between it and the Respondent 1 being reported in the international media, it was allegedly never contacted by the Claimant until the rejection of the relevant ITC request, on 4 August 2011. In view of the foregoing, the Respondent 2 maintains that it was in good faith in assuming that the player was not under contract with the Claimant, at the time it signed the relevant employment contract with the player. The Respondent 2 also states that the Respondent 1 was determined to leave the Claimant at the time he went to country Q and that the fact it offered him the

professional and financial conditions he was seeking does not mean that the Respondent 2 influenced in any way the player's departure from the Claimant club. As a result, in the event that the contract in question is deemed to be valid, the Respondent 2 maintains that its behaviour did not lead to the alleged breach of contract and, thus, it did not induce the Respondent 1 to breach the contract. Consequently, no disciplinary sanctions should be imposed on it.

14. With regard to the requested amount of compensation, the Respondent 2 states that the amount of EUR 5,000,000 which apparently constitutes a loss of profit for not being able to transfer the player to Club R cannot be taken into consideration. Firstly, the correspondence from Club R is a mere offer and, secondly, the alleged loss of profit is in no way related to the conclusion of the employment contract between the Respondent 1 and Respondent 2 since the signature of said contract occurred approximately 6 months after receipt of the aforementioned offer.

15. In conclusion, the Respondent 2 asks for the claim to be entirely rejected.

16. In relation to the above-mentioned responses from the Respondents, the Claimant argues that the player's signature on the contract is similar to his signature contained on other documents such as his registration cards, payment slips and passports. In this respect, the Claimant remitted several documents containing the player's signature.

17. Furthermore, the Claimant refers to several documents in which the Respondent 1 allegedly acknowledges being contractually bound to it. Firstly, the Claimant refers to an interview given by the player to country C TV on 3 June 2012, copies of which were provided by the Claimant on CD, in which the Respondent 1 states that he spent five years with the Claimant during which he received his monthly salary on time as well as other bonuses. In this interview, the player specifies that this can be proven since he signed payment slips every month. Secondly, the Claimant states that the Respondent 1 acknowledged the existence of a contract with the Claimant in the e-mail addressed to the president of the country C Football Federation on 8 August 2011, in which he mentioned his fears of the potential consequences for having two simultaneous contracts. In continuation, the Claimant refers to letters dated 22 July 2011, 6 August 2011 and 26 August 2011 addressed by the country C Football Federation to FIFA in which the country C Football Federation clearly mentions that the player is bound to the Claimant by a valid contract. Finally, the Claimant refers to the correspondence addressed by the Respondent 1 to FIFA on 10 August 2011, stating that he had signed the contract with the Respondent 2 under the condition that the latter would make an offer to the Claimant in order reach an agreement for his transfer.

18. As regards the player's request that the FIFA DRC should declare itself incompetent to adjudicate in the matter at stake, the Claimant argues that the DRC is competent in

accordance with art. 22 and 24 of the Regulations on the Status and Transfer of Player. In particular, there is an international dimension since the Respondent 1 is currently registered at the country Q Football Association. Furthermore, as to the player's claim that only a country C court would be competent to decide on the issue of the signature of the contract, the Claimant insists that such a request would have to be lodged by the Respondent 1 himself who carries the burden of proof related to his allegation that his signature on the relevant contract was forged.

19. Upon request from FIFA's administration to be provided with the original contract signed by the Respondent 1 and the Claimant, the latter answered that it was unable to find the original signed by the hand of the parties in its files. However, it insists that the copy provided was not forged.

20. The Respondent 2 submitted its final considerations by claiming that the alleged contract between the Respondent 1 and the Claimant does not exist. In this respect, the Respondent 2 points out that the Claimant was unable to remit the original document and there is no indication that a copy of the alleged contract was ever registered at the country C Football Federation.

21. Subsequently, the Respondent 2 provided its position in relation to the player's signature featuring on the contract. In particular, it states that from a *prima facie* analysis the alleged signature of the Respondent 1 is clearly different to his signature on other documents. The Respondent 2 also argues that the contract should anyhow be declared null and void because it neither corresponds to the minimum requirements for professional football player contracts outlined in the FIFA Circular no. 1171, nor to the relevant provisions of country C national law.

22. In continuation, the Respondent 2 argues that in the interview given by the player to country C TV, the Respondent 1 never admits that he signed a contract with the Claimant and only confirms that he received amounts from the Claimant and competed with them.

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 28 September 2011. Consequently, the previous edition of 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. a) 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 an employment-related dispute in relation to the maintenance of contractual stability where there has been an International Transfer Certificate (ITC) request and a claim from an interested party in relation to the said ITC request. In particular, the DRC maintained that its competence in matters such as the one at stake, based on art. 22 lit. a) of the Regulations, does not require the relevant parties to be from different countries, but rather that the employment-related dispute arose within the context of a request for delivery of an ITC for the player in question.

3. Furthermore, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2012) and, on the other hand, to the fact that the present claim was lodged on 18 September 2011. The Dispute Resolution Chamber concluded that the 2010 version of the Regulations on the Status and Transfer of Players (hereinafter: *the 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, it had, on 2 February 2009, concluded an employment contract with the Respondent 1 for a five-year period and that it had proven having regularly paid a salary to the player by means of the original salary receipts it had submitted. The Claimant had apparently been offered the amount of EUR 5,000,000 for the transfer of the player by Club R, from country B, and, therefore, the Claimant asked to be awarded compensation for breach of contract in the amount of EUR 5,000,000 to be paid jointly by both Respondents.

5. The Dispute Resolution Chamber equally took due note of the fact that the Respondent 1, on his part, had categorically denied the conclusion of an employment contract with the Claimant. The Respondent 1 admitted having received regular payments from the Claimant but insisted that he competed with the Claimant from 2009 to 2011 on the basis of an oral agreement and without having ever signed a written employment contract.

6. The Dispute Resolution Chamber also gave due consideration to the arguments of the Respondent 2. Firstly, its assessment that it did not influence the player's departure from country C and, therefore, did not induce the breach of the alleged

employment relationship. Secondly, its conclusion that the claim should be rejected because the player never signed a written employment contract with the Claimant and the Claimant failed to prove the existence of the disputed contract.

7. In view of aforementioned dissent between the parties in respect of the basic question as to whether or not an employment contract between the Claimant and the Respondent 1 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 up to the Claimant to prove the existence of the employment contract on the basis of which compensation for breach of contract by the Respondent 1 is claimed.

8. Having stated the above, the Dispute Resolution Chamber recalled that the Respondent 1 maintained that he never signed a written employment contract with the Claimant and maintained that his signature contained on the copy of the contract remitted by the Claimant was forged. What is more, the Claimant expressly admitted being unable to provide the relevant employment contract in its original form signed by the hand of the parties. On account of these considerations, the Chamber held that the fact the Claimant had only submitted a copy of the disputed contract was insufficient to establish the existence of the alleged contractual relationship.

9. Nevertheless, the Claimant had submitted a series of documents in support of its claim which were subsequently examined by the members of the Chamber.

10. In this regard, the Dispute Resolution Chamber took note of the original payment slips for the months of January, February, and April 2011 for USD 15,000 each, as well as the payment slip for USD 6,000 as *''salary supplement''* dated 30 November 2010. These payment slips were all signed by the Respondent 1 and their payment was not contested by him.

11. Moreover, despite the fact that the Chamber acknowledged that the player had received the aforementioned amounts, the members maintained that this by no means constituted proof that they were based on a valid employment contract. In particular, the Dispute Resolution Chamber pointed out that the amount of USD 15,000 did not correspond to the USD 4,000 which was foreseen as monthly salary in the copy of the contract provided by the Claimant. In this respect, the Chamber also insisted that the salary raises alleged by the Claimant had not been substantiated by documentary evidence of any kind.

12. Turning their attention to the documents submitted by the Claimant which allegedly indicate that the player admitted being under contract with the Claimant (cf. point I./17. above), the members of the Chamber held that at no time did the Respondent 1 declare having signed an employment contract with the Claimant. In fact, the player only appears to have ever confirmed that he was part of the Claimant's club and received some amounts of money.

13. Having duly taken note of the aforementioned documentation presented by the Claimant, the members of the Chamber held that in order for the Chamber to be able to assume that the Respondent 1 and the Claimant 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 do not imply with certainty 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.

14. 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 1 and the Claimant had validly entered into an employment contract, regardless of the fact that the Respondent 1 competed with the Claimant for a certain period of time.

15. What is more, even if it would have been possible to establish on the basis of the documents on file, other than the original employment contract, that the parties had entered into a labour agreement, the Chamber wished to highlight that it would need to be in possession of a written contract in accordance with art. 2 par. 2 of the Regulations, which could clearly be considered as valid, in order to be able to properly assess the claim of the Claimant.

16. As a consequence, the Dispute Resolution Chamber decided that, since the Claimant had not been able to prove beyond doubt that an employment contract had validly been concluded between itself and the Respondent 1, there was no possibility for the Chamber to enter into the question whether or not such alleged employment contract had been breached.

17. All the above led the Dispute Resolution Chamber to conclude that the claim of the player has to be rejected.

III. Decision of the Dispute Resolution Chamber

The claim of the Claimant, Club T, 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:

Jérôme Valcke
Secretary General

Encl. CAS directives