

# **Decision of the Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 17 December 2015,

in the following composition:

**Thomas Grimm (Switzerland)**, Deputy Chairman  
**Mario Gallavotti (Italy)**, 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 13 January 2014, Player A from country B (hereinafter: *the Claimant*) and Club C from country D (hereinafter: *the Respondent*) signed an employment contract (hereinafter: *the contract*), valid as from the date of signature until 31 May 2015, i.e. "*for a year and half*".
2. According to art. 5 of the contract, the Respondent undertakes to pay the Claimant, *inter alia*, "*a total payment for a year and half 120.000 USD net*".
3. Furthermore, art. 4.1 of the contract stipulates that "*This contract may be terminated in the following cases stated below: a. if club does not pay the salary intended in Article. 5.1 of the contract during 3 months. (...) c. if there are other justifiable reasons intended in the Article on the status and transfer of the football players of FIFA. And Regulations on status and transfer of the football players of the Football Federation of country D.*".
4. According to art. 4.2 of the contract "*This contract may be terminated by the rest of the club in the following cases stated below: a. if football player does not observe the disciplinary rules; b. if there are cases intended in the Article on the status and transfer of the football players of FIFA and Regulations on status and transfer of the football players of Football Federation of country D; c. in the case of negative situations the football club has authority to break contract unilaterally and stop the payment for player*".
5. Art. 4.3 further stipulates that "*This contract may one-sidedly be terminated by Club and all expanses have to be paid until termination day*".
6. On 24 June 2014, after having sent the Respondent a reminder dated 16 June 2014 requesting the payment of his salary for the months of April and May 2014, by no later than 23 June 2014, the Claimant terminated the employment

contract in writing, alleging that the Respondent failed to reply or pay the due amounts within the mentioned deadline.

7. On 31 July 2014, the Claimant lodged a claim against the Respondent before FIFA for breach of contract, requesting, the payment of the total net amount of USD 105,000, plus interest of 5% *p.a.*, broken down as follow:
  - a. USD 15,000 as outstanding salaries corresponding to his salaries for the months of April and May 2014, with 5% interest *p.a.* as from due dates (1 May 2014 on the amount of USD 7,500 and 1 June 2014 on the other amount of USD 7,500);
  - b. USD 90,000 as compensation for breach of contract corresponding to the residual value of the contract, from 1 June to 31 May 2015, plus 5 % interest *p.a.* as from 25 June 2014.
8. In his claim, the Claimant explains that, on 17 May 2014, after the last round of the 2013/2014 season, the Respondent was relegated to a lower division and as from this moment, the Respondent ceased to pay him and appeared not to be interested in his services anymore.
9. In this context, the Claimant pointed out that he always complied with his obligations and that the Respondent never gave him any justification to retain his salary. For this reason, the Claimant sent a final notice to the Respondent on 16 June 2014, giving it a seven days deadline to proceed with the payment of the outstanding amount. In the absence of any reaction or payment from the Respondent, the Claimant deemed that he had no other choice but to terminate the contract with the Respondent on 24 June 2014 (cf. point I.6. above).
10. In its reply to the Claimant's claim, the Respondent holds having fulfilled all its contractual obligations. According to the Respondent, the Claimant left country D at the end of the month of May 2014, and refused to come back. For this reason, he did not receive his salaries for the months of April and May 2014. In

addition, the Respondent states to have tried to contact the Claimant and solve the situation, by buying him a return ticket to country D, but without success.

11. According to TMS, the Claimant found new employment with the club from country B, Club E, from 28 June 2014 until 30 November 2014, for which he was entitled 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 31 July 2014. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2012; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. article 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 and par. 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (editions 2012, 2014 and 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 an 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 (editions 2012, 2014 and 2015), and considering that the present claim was lodged on 31 July 2014, the 2012 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

4. The competence of the DRC and the applicable regulations having been established, the Chamber entered into the substance of the matter. In doing so, it started to acknowledge the facts of the case as well as the documents contained in the file.
5. 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.
6. In this respect, the members of the Chamber acknowledged that the parties were bound by an employment contract, which was signed on 13 January 2014 and valid as from the date of signature until 31 May 2015.
7. In continuation, the members of the Chamber noted that the Claimant lodged a claim against the Respondent maintaining that he had terminated the employment contract with just cause on 24 June 2014, after previously having put the club in default on 16 June 2014, since the Respondent allegedly failed to pay him his salaries for the months of April and May 2014 (cf. point I.6. above). Consequently, the Claimant asks to be awarded his outstanding dues as well as the payment of compensation for breach of the employment contract.
8. The Respondent, for its part, submitted that the Claimant had been absent as from the end of the month of May 2014 without its authorisation even after having been requested to resume his duties. In addition, the Respondent asserted that it had tried to contact the Claimant and even provided him a flight ticket to come back to the club but the latter refused to do so.
9. Having established the aforementioned, the Chamber deemed that the underlying issue in this dispute, considering the claim of the Claimant and the allegations of the Respondent, was to determine whether the employment contract had been unilaterally terminated with or without just cause by the Claimant.

10. At this point already, and in relation to the documentation provided by the parties, the Chamber deemed it appropriate to refer the parties to the content of art. 12 par. 3 of the Procedural Rules, according to which *“any party claiming a right on the basis on an alleged fact shall carry the burden of proof”*. In this particular case, the Chamber pointed out that the Claimant had not presented any documentary evidence corroborating his assertion that the Respondent was not interested into his services anymore. In fact, the Chamber noted that the Respondent did present evidence that it indeed provided the player with a return flight ticket to country D and that it contacted the player, requesting his return.
11. Subsequently, the Chamber noted that it remained undisputed by the Respondent that, on the date of termination, *i.e.* 24 June 2014, the Claimant’s salary for the months of April and May 2014 remained unpaid, in spite of the Claimant’s reminder previously sent to the Respondent on 16 June 2014 (cf. point I.6. above).
12. Turning its attention to the arguments of the Respondent for the non-payment of the Claimant’s salary, the DRC noted that the Respondent acknowledges the non-payment but does not present any valid reason or evidence for not paying the Claimant’s salary for two consecutive months, *i.e.* April and May 2014.
13. Moreover, the members of the Chamber highlighted that art. 4.1. of the employment contract (cf. point I.3. above) stipulates that the contract may be terminated in the case that the Respondent does not pay the Claimant’s salary for three months. This was not only freely agreed between the Claimant and the Respondent in their contract but it is also in line with the Chamber’s longstanding jurisprudence.
14. On account of the above, the DRC decided that the Respondent did not have a just cause to unilaterally terminate the employment relationship between the Claimant and the Respondent, on 24 June 2014.

15. On account of the aforementioned considerations, the Chamber decided that in accordance with the general legal principle of *pacta sunt servanda*, since the Claimant rendered his services until and including the month of May 2014, the Respondent is liable to pay to the Claimant the remuneration that was outstanding at the time of the termination *i.e.* the amount of USD 15,000.
16. In addition, taking into account the Claimant's request, the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* as of the day following the day on which each of the payments included in the global amount of USD 15,000 fell due in accordance with the pertinent employment contract.
17. The DRC concluded its deliberations in the present matter by establishing that any further claim of the Claimant is rejected.

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### **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, outstanding remuneration in the amount of USD 15,000 plus 5% interest *p.a.* until the date of effective payment as follows:
  - a. 5% *p.a.* as of 1 May 2014 on the amount of USD 7,500;
  - b. 5% *p.a.* as of 1 June 2014 on the amount of USD 7,500.
3. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's 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.

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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  
Switzerland  
Tel: +41 21 613 50 00  
Fax: +41 21 613 50 01  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
[www.tas-cas.org](http://www.tas-cas.org)

For the Dispute Resolution Chamber:

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Markus Kattner  
Acting Secretary General

Encl.: CAS directives