Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 15 February 2008,

in the following composition:

Slim Aloulou (Tunisia), Chairman
Philippe Piat (France), member
Carlos Soto (Chile), member
Philippe Diallo (France), member
Mohamed Mecherara (Algeria), member

on the claim presented by the club

F
represented by, ABC, attorney at law

as *Claimant*

against the player

Z

as *first Respondent*

and the club

D

as *second Respondent*

regarding an employment-related dispute concerning an alleged breach of contract and an alleged inducement to breach of contract arisen between the parties involved.

I. Facts of the case

1. On 17 November 2006, the player Z (hereinafter: *the player* or *first Respondent*), who was apparently unemployed at that time, and the club F (hereinafter: *the Claimant*) entered into an employment contract valid as of 1 July 2007 until 30 June 2008. The said contract provides, *inter alia,* for a monthly salary of EUR 2,800, premiums in accordance with the club's regulations and transport costs in the maximum amount of EUR 200 per month. Furthermore, the contract contains, *inter alia*, the following clauses:

   Clause 3 para. 1: *"The contract (...) is only valid for the regional league. Consequently, it is a condition that the club plays with its 1st football team in the regional league during the validity period of the contract"*.

   Clause 3 para. 2: *"The contract only begins upon the grant of the permission to play by the Federation".*

   Clause 3 para. 3: *"The contract ends prematurely with the coming into effect of a cancellation agreement between the parties or a termination without notice for just cause"*.

   Clause 9 para. 8: *"In case the player does not take up the employment relationship (...), the player shall be liable to pay to the club a contractual penalty in the amount of one monthly salary"*.

2. On 1 January 2007, the player concluded an employment contract with the club D (hereinafter: the *second Respondent*), valid as of 1 January 2007 until 1 July 2008. According to this contract, the player is entitled to receive a monthly remuneration of USD 2,500 as well as the following bonuses:

   - For winning the National Championship USD 5,000
   - For winning the D. K Cup USD 2,500
   - For reaching the group stage of the UEFA Champions League USD 10,000
   - For reaching the group stage of the UEFA Cup USD 50,000

   Furthermore, the contractual entitlements of the player include the amount of USD 300 per month for an apartment, a car at his disposal and one return flight ticket.

3. On 27 July 2007, the Football Federation of F contacted FIFA in order to obtain international clearance for the player. The Football Federation of F explained that it had asked the Football Federation of D for the player's international transfer certificate (ITC) on 29 June 2007. However, it had been informed by its counterpart on 26 July 2007 that the first Respondent had a valid employment contract with the second Respondent and did not plan to move to another club.

4. On 2 August 2007, FIFA invited the Football Federation of D to either issue the ITC for the player or to present valid reasons possibly justifying a refusal. On 13 August 2007, the Football Federation of D forwarded statements of its affiliated club and the player, according to which the player was currently playing for D on the basis of their employment contract dated 1 January 2007. The ITC and registration of the player had been obtained without any problem, and the second Respondent had not been informed of any problems whatsoever related to previous clubs of the player.

5. In particular, the first Respondent explained that, in November 2006, he had been offered to sign a contract with F in case the club was promoted to the *"regional league"* after the 2006/2007 season. Consequently, since the player had been unemployed at that time, he had, on 17 November 2006, signed a one-year contract which was only valid in case the Claimant would play in the *"regional league"*. According to the first Respondent, the club had confirmed that he would receive a copy of the relevant contract as soon as it had been registered. However, the player affirms never having received a copy of the agreement. Subsequently, in the end of November 2006, he had been offered an employment contract by D. In this regard, the player explained that, on the one hand, he had the offer of the Claimant, a club which was at that time not sure to be promoted to the *"regional league"* and which had failed to send him his contract, and, on the other hand, he had received the offer of the second Respondent which gave him some security for the next 18 months. Consequently, he had decided to conclude an employment contract with the club. The player asserted that he had duly informed F of his intentions before he signed his contract with D and that the club had not protested in any form. Therefore, the Claimant had been perfectly aware of the conclusion of an employment contract between the first and the second Respondent and should have contacted D in case it objected to this contractual relationship.

6. The player also referred to clause 3 para. 2 of his contract with F and held that, since the club had failed to provide him with a copy of his contract, he had been of the opinion that the contract had not been duly registered and was therefore not valid. Moreover, with reference to clause 3 par. 3 of the contract with the Claimant, the player deemed that the conclusion of his contract with D was an important reason to rescind the contract with F.

7. The player concluded that he was satisfied playing for the second Respondent and did not want to play for any other club.

8. On 17 August 2007, FIFA informed the Football Federation of F, the Football Federation of D as well as the two clubs involved that, in view of the player's contractual relation with D and his explicit wish to stay with the said club, FIFA was not in a position to intervene with regard to the issuance of the relevant player's ITC in favour of the Football Federation of F.

9. On 28 August 2007, the Claimant asserted, in view of the fact that the validity periods of the two relevant labour agreements signed by the player partially overlap, that the player had clearly concluded his contract with D after he had signed the contract with F. Thereby, the first Respondent had been fully aware of the contractual obligations previously entered into with the club. Furthermore, F contested that the player had not received a copy of the contract he had signed with the club, he had in fact received a copy immediately after its signature on 17 November 2006. The Claimant also contested that it had ever been informed beforehand that the player would sign an employment contract with the second Respondent. In fact, the player had informed the coach of F that his contract with D was only valid until 30 June 2007.

10. The club emphasised that its contract with the first Respondent had never been cancelled at any time. On the contrary, the said agreement had been registered with the regional Football Association on 17 November 2006. In this regard, the Claimant presented a respective notice of receipt of the regional Football Association. Consequently, F held that it was clear that the player had breached his contract with the club. On account of the foregoing, F claimed compensation from the player in the amount of EUR 150,000, and that D be declared jointly liable for the payment of the said amount.

11. On 29 October 2007, the second Respondent asserted that it did not see any legal basis for F's claim for EUR 150,000 since the latter had not spent any money at all on the player. Furthermore, it rejected the club's claim that D be jointly liable for the said amount, as the club had not broken any rules. D emphasised that it had borne expenses in connection with the player and that consequently, it would only agree to his transfer to the Claimant in case the club would pay compensation in the amount of EUR 200,000.

12. On 29 October 2007, the first Respondent reiterated that he had never received a copy of his contract with F and that the club had been well informed that he had signed a contract with the second Respondent. The respective information had also been in the press. The player deemed that the only reason why the Claimant objected to him playing for D was in order to make a financial gain. The manager of the club had namely previously contacted him in order to negotiate a compensation for the termination of his contract with F.

13. On 17 December 2007, the Claimant, apart from reiterating its previous statements, confirmed that it had negotiated on compensation with the first Respondent, which had, however, not led to any agreement. Furthermore, it pointed out that D itself had set the transfer value of the player at EUR 200,000 in its letter dated 29 October 2007.

14. In their final positions, the club and the player referred to their respective previous statements. The player furthermore held that the club had not suffered any financial damages due to his absence and that the amount of EUR 150,000 claimed by the club was excessive.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber 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 August 2007. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2005 (hereinafter: Procedural Rules), are applicable to the matter at hand (cf. art. 18 paras. 2 and 3 of the Procedural Rules).

2. Subsequently, the members of the Chamber referred to art. 3 para. 1 of the Procedural Rules and confirmed that in accordance with art. 24 para. 1 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2008) the Dispute Resolution Chamber is competent to deal with the matter at stake, which involves, on the one hand, a club F and, on the other hand, a player Z and a club D, and is related to an alleged breach of an employment contract respectively the alleged inducement to such breach of contract.

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 paras. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2008), and considering that the present claim was lodged on 28 August 2007, the previous version of the regulations (edition 2005; hereinafter: Regulations) is applicable to the matter at hand as to the substance.

4. Entering into the substance of the matter, the Dispute Resolution Chamber commenced its deliberations by proceeding to a thorough analysis of the circumstances given in the matter at hand. The Chamber firstly acknowledged that, on 17 November 2006, the Claimant and the first Respondent had entered into an employment contract valid as from 1 July 2007 until 30 June 2008. In continuation, the members present at the relevant meeting took due note of the fact that, subsequently, on 1 January 2007, the first and the second Respondent concluded an employment contract valid as from the same date until 1 July 2008.

5. In this context, the members of the Chamber proceeded to deliberate on the Claimant's allegation according to which the player had, by signing two contracts with partially overlapping validity periods, breached the first of the two contracts he had entered into, namely the one he concluded with the Claimant.

6. During its deliberations, the Chamber acknowledged that, whereas the employment contract concluded between the Claimant and the first Respondent was originally valid from 1 July 2007 until 30 June 2008, the labour agreement entered into by the first and the second Respondent stipulated a validity period lasting from 1 January 2007 until 1 July 2008. Consequently, the members of the Chamber determined that the validity periods laid down in the respective agreements were indeed overlapping, i.e. during the period from 1 July 2007 until 30 June 2008.

7. On account of the above, the Dispute Resolution Chamber referred to art. 18 para. 5 of the Regulations, according to which *"If a Professional enters into more than one contract covering the same period, the provisions set forth in Chapter IV shall apply"*, while recalling that the aforementioned Chapter IV of the Regulations governs the maintenance of contractual stability between professionals and clubs including the consequences of terminating a contract without just cause.

8. In this regard, the Chamber reiterated that the player had, after having signed an employment contract with the Claimant, concluded a further employment contract with the second Respondent partially covering the same period of time. In this regard, the Dispute Resolution Chamber was eager to stress that the player had neither had the consent of the Claimant to proceed in this way nor had he been able to demonstrate that he had had a just cause to terminate the contract with the club before signing the agreement with the second Respondent. Consequently, the members of the Chamber determined that, by signing the employment contract with the second Respondent partially covering the same period of time, in accordance with art. 18 para. 5 of the Regulations Chapter IV of the Regulations shall apply.

9. The members of the Chamber were of the unanimous opinion that the arguments which the first Respondent had put forth in his defence, in particular that he had allegedly not received a copy of his employment contract with the Claimant and that he had thought that the said agreement had not been duly registered, could not be upheld, as they did not alter anything with regard to the validity of the contract concluded by and between the Claimant and the first Respondent.

10. In view of the above, the members of the Chamber proceeded to deliberate on the consequences of the player's signing of two contracts partially covering the same period of time and, in doing so, first of all referred to art. 17 para. 1 of the Regulations, according to which *"in all cases, the party in breach shall pay compensation"*. Consequently, the Chamber acknowledged that, on the basis of the circumstances of the present case, the player is liable to pay compensation to the Claimant for breach of contract. Furthermore, the Dispute Resolution Chamber took due note that F claims the amount of EUR 150,000, however without further specifying how this amount is composed.

11. While determining the amount due as compensation, the Dispute Resolution Chamber pointed out that, by virtue of art. 17 paras. 1 and 2 of the Regulations, the amount of compensation may be stipulated in the relevant employment

contract. Bearing this in mind, the members of the Chamber referred to clause 9 para. 8 of the agreement between the Claimant and the player, according to which *"In case the player does not take up the employment relationship (...), the player shall be liable to pay to the club a contractual penalty in the amount of one monthly salary"* and held that this provision was applicable to the present case since the player had indeed not taken up the employment with the Claimant.

12. Thus, applying the said clause in the matter at stake, the Dispute Resolution Chamber came to the conclusion that the player was liable to pay the amount of one monthly salary as per the relevant employment contract, i.e. EUR 2,800, to the Claimant for breach of contract. Furthermore, the Chamber determined that, in application of art. 17 para. 2 of the Regulations, the second Respondent is jointly and severally liable for the payment of the relevant compensation towards the Claimant.

13. On account of all of the above, the Dispute Resolution Chamber concluded its deliberations by determining that the first Respondent has to pay to the Claimant compensation amounting to EUR 2,800 and that the second Respondent is jointly and severally liable for the payment of the aforementioned amount. Finally, the Chamber declared that all further claims of the Claimant were rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, F is partially accepted.

2. The first Respondent, Z is ordered to pay compensation in the amount of EUR 2,800 to the Claimant, F, **within 30 days** as of the date of notification of the present decision.

3. In the event that the above-mentioned amount is not paid within the stated time limit, an interest rate of 5% per year will apply as of expiry of the aforementioned time limit and the present matter shall be submitted to FIFA's Disciplinary Committee for its consideration and decision.

4. The second Respondent, D is jointly and severally liable for the payment of the amount mentioned under point III.2. to the Claimant, F.

5. The Claimant, F is directed to inform the first Respondent, Z, and the second Respondent, D, directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

6. Any further requests of the Claimant, F, are rejected.

7. According to art. 61 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).

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On behalf of the
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Jérôme Valcke
Secretary General

Encl. CAS directives