

## **Decision of the Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 28 March 2008,

in the following composition:

**Mr. Slim Aloulou** (Tunisia), Chairman

**Mr. Mario Gallavotti** (Italy), Member

**Mr. Essa M. Saleh al-Housani** (UAE), Member

**Mr. Rinaldo Martorelli** (B), Member

**Mr. Mick McGuire** (England), Member

on the claim presented by the player

**J**

represented by Mr. D

as "*Claimant*"

against the clubs

**D**

and

**S**

as "*Respondents and Counter-Claimants*"

regarding a contractual dispute between the parties involved.

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## **I. Facts of the case**

1. On 19 December 2003, the player J (hereinafter: the player) and the club D FC (hereinafter: D) signed an employment contract valid between 1 January 2004 until 31 December 2005.
2. The relevant contract stipulates in its article 3 that the club has to pay to the player J a monthly salary of USD 20,000 net per month. Moreover, the same article stipulates different bonuses to be paid to the player J.
3. The article 4 point 1 of the aforementioned employment contract stipulates that D had to pay USD 700,000 for 2 years loan to a private company. The article 4 point 2 of the same contract stipulates an obligation for D to contract an insurance covering USD 500,000.
4. On 24 December 2004, the club D and the club S Football Club (hereinafter: Seongnam) concluded a loan agreement for the player Jefferson. This loan agreement was not signed by the player. The point 2 of this loan agreement established the amount of USD 400,000 as transfer compensation to be paid by S to D.
5. On 31 January 2005, the player Jefferson signed an employment contract with the club S valid as from 1 January 2005 until 31 December 2005. In accordance with the article 3 of the cited employment contract, the player would be entitled to a monthly salary of USD 22,000 as well as housing, car, bonuses and air tickets.
6. On 1 July 2005, the player J requested the assistance of FIFA informing that after he signed the relevant employment contract with S he played 5 matches and in March 2005 during a match he started to feel pain in his knee, he informed S about it. In April he continued complaining to S about his pain but he did not receive any reaction from the club. The latter ordered the player to participate in training sessions alleging that S's medical department had diagnosed no injury to the player J. Because the player Jefferson continued feeling pain in his knee, finally the club requested a more detailed medical test at a hospital called E.
7. On 11 April 2005, a medical test was done at the hospital and the diagnosis was "no injury found". The player J sent to FIFA a CD with the relevant X-Ray images. On the same day the player J forwarded the relevant CD to his physician in B. The doctor informed the player that from the images he can assure that he had a severe injury and that he had to undergo a knee surgery. The player J submitted to FIFA the relevant report dated 18 April 2005. J informed S about the report of the B doctor but S deemed that the player, in fact, was not willing to play and informed him that he had to go back to training sessions and to play matches.
8. On 13 April 2005, the player J informed that he signed a document in a desperately situation and under the pressure of S since it was the only way for the player to leave K. By means of this document the player stated his intention to terminate the contract with S and to reimburse the monies received.

9. On 14 April 2005, the player considered that his injury was not seriously considered by S and he has to take care of his physical integrity. Therefore, J deemed that he had not any other option that leave K and returned to his country (B).
10. J stated that he paid the two flight return tickets to B (for him and his personal manager) and that S never paid this amount back. The player submitted to FIFA evidences of the payments of the two flights tickets.
11. J rejected the argument of S that he left to B to sign a contract for a new club and that prove of that is that he was a long time not playing.
12. Once in B, J visited his doctor, Mr. L and undertook more examinations, the doctor confirmed his previous diagnosis and informed him that it is expected to recover within 6 to 10 months. The player J sent to FIFA copy of the medical report. Moreover, J went to another doctor in B Mr. A who analyzed the examinations done in K and he confirmed that it is also possible to determine the injury in that images and confirmed the diagnosis. Finally, Jefferson visited the physician of the B national team Dr. R who also confirmed the diagnosis. The player sent to FIFA a copy of the relevant reports.
13. On 3 May 2005, Jefferson undertook the surgery with Dr. L. The player informed that the medical costs, expenses were of 14,170. The player sent copies of the receipts to FIFA. Moreover the player remitted to FIFA a copy of estimate budget for therapy, 18 sessions per week for 8 months totalling 62,100.
14. In particular, the player J stated that his loan was agreed by both K club without his participations and it is contrary to the art. 10 of the Regulations for the Status and Transfer of Players (hereinafter: the Regulations). Moreover, J states that he signed the relevant employment contract with S under pressure.
15. In addition, Jefferson stated that the position of D is unacceptable since they could have informed S about taking J back, if the player was not properly treated. D escaped from his responsibilities derived from the employment contract signed on 19 December 2003.
16. Therefore D and S are jointly responsible for the consequences of the relevant and respective breach of contracts.
17. In view of the above, the player Jefferson requests to FIFA:
  - a) to acknowledge that because of the K clubs behaviour by neglecting the injury and medical treatment gave rise to declare the relevant employment contract terminated with just cause;
  - b) to condemn both clubs to pay the amount of USD 48,639.07 as expenses divided in the following way: a) USD 16,501.58 (USD 8,033 x 2 air tickets); b) USD 6,262.49 (medical tests, hospital fees, surgery) and c) USD 25,875,00 (therapy sessions);
  - c) to pay the amount of USD 22,000 as salary of April 2005;

- d) to pay a compensation equivalent to the remaining amount of monthly salaries until the end of the validity of the employment contract with S taking in consideration that the player will not be able to play for a long time;
- e) to pay the amount of USD 500,000 as amount compromised to cover by an insurance based on the article 4 point 2 of the relevant employment contract with D;
- f) to pay a compensation for moral and physical damages;
- g) to set out an interest rate of 5% per annum applying on all payments since their due date;
- h) to impose disciplinary measures on the clubs in accordance with art. 23. par. 2 of the Regulations.

### **POSITION OF D**

18. When J went on holidays to B after season 2004, he was still playing for D. J requested D several times to be transferred to another club.
19. On 24 December 2004, D and S concluded a loan agreement. On 31 January 2005 the player J signed an employment contract with S according to their free will. The conditions of the new employment contract were better for the player than the previous contract with D.
20. On 25 February 2005, S paid to D the amount of USD 400,000 as transfer compensation.
21. Since J was playing for S, D did not have any longer any responsibility towards the player.
22. If there were any contractual problems between J and S, the player or the club should have informed D about it. J never informed D about the injury and he left K without giving any notice.
23. D was not in a position to know that J was injured during the period of his loan to S. If the player was injured S should take that responsibility.
24. According to the loan agreement signed between both clubs, D does not have any responsibility for any possible injury of the player J during the loan.
25. According to the terms of the employment contract signed between J and S in case of injury the player should be examined and treated at the hospital designated by S. The article 11 of the cited employment contract establishes that if the player needs medical treatment due to injuries made during the activities he should be treated at the hospital appointed by the club.
26. J breached the employment contract with S by going to B instead of staying in K and being treated at the hospital appointed by the cited club. Therefore J has to compensate both K clubs for damages.
27. In particular, D states that according to the article 20 of the employment contract concluded with Jefferson he should pay compensation for damage. In particular, the cited clause refers to the event if the player leaves the team without notice or breach the contract, in that case, the player should compensate by double the

amounts that he received until the moment of the termination of the relevant contract.

28. D informed that Jefferson received from D during the course of their labour relationship the total amount of USD 940,000 divided as, USD 240,000 (in accordance with article 3 of the employment contract) and USD 700,000 (in accordance with article 4 of the cited contract).
29. Consequently, D requests based on the aforementioned article 20 from the player J the payment of the total amount of USD 1,880,000 as damage compensation as a consequence for the breach of the relevant employment contract.
30. In addition, D requests FIFA to reject the claim of the player J.

#### **POSITION OF SEONGNAM**

31. The club S states that the player J informed them that his son was ill in B. The player left K on 14 April 2005 to go to B without authorization of the club. S deems that Jefferson went to B in order to be transferred to a B club.
32. If the player J deems that the loan agreement concluded with S was done without his authorization, the player has to prove it.
33. S paid special attention to the injury of the player Jefferson including checks and examinations at the Hospital E. As a result of these exams, the doctor recommended physical therapy. S remitted the relevant medical report dated 29 April 2005 to FIFA.
34. S paid to J USD 8,033 on 14 April 2005 for the flight ticket.
35. S submitted to FIFA the following bank transfer confirmations for a total amount of USD 534,746 (transfer compensation, salary, premium bonus, etc.):
  - USD 440,000, transfer compensation paid to D on 25 February 2005.
  - USD 19,264, amount paid to the player J on 28 February 2005, no reason specified.
  - USD 45,449, amount paid to the player J on 28 March 2005, no reason specified.
  - USD 8,033, flight ticket paid to the player J on 14 April 2005. The player J stated that the club made a deposit in his bank account in K and after he left the country, S gave the order to the bank to not release any monies to him.
  - USD 22,000, fee for players' agent service paid to a private company owned by the players' agent on 25 February 2005.
36. S refused to pay to Jefferson the following issues:
  - medical expenses or fees since they do not agree with the diagnosis and treatment provided to the player in B.
  - the amount of USD 22,000 as salary of April 2005, because the player left K on 14 April 2005 without the relevant permission of the club.
  - the amount of 500,000 as damage because in the contract between S and J there is not an specific clause for damages.

37. S tried several times to find an amicable solution with the player but it was not possible, the player J left K and he did not come back.
38. S stated that an evidence of the breach of the employment contract is the document dated 13 April 2005 by means of which, the player stated his intention to terminate the contract and to refund the 3 months salaries already paid (as from January until March 2005) by the club in accordance with article 15 of the relevant employment contract. The cited article 15 states that if the player terminates the contract, the salaries that the player received should be paid back to the club.
39. S considers that the player J breached the relevant employment contract without just cause and therefore requests the payment of a damage compensation of USD 539,771 taking in consideration all the monies that the club paid for the player J. Moreover, S requests FIFA to impose disciplinary sanctions to the player J.
40. On 26 August 2005, FIFA remitted to the three relevant parties a communication informing that based on the circumstances it appears that the labour relationship was seriously disrupted and advised the parties to focus on the financial aspects of the dispute.
41. The B Football Confederation informed FIFA that the player J was registered for the B club G on 12 January 2006. The B Football Confederation remitted to FIFA a copy of the relevant employment contract, which was valid as from 1 January 2006 until 31 May 2006 with a monthly salary of 11,000.

## **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 1 July 2005. 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 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 2008) 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 B player and two K clubs.
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 (edition 2008), and considering that the present claim was lodged on 1 July 2005,

the previous version of the regulations (edition 2005; 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 members of the Chamber entered into the substance of the matter by acknowledging three important facts: - firstly that the player J (hereinafter: the player) and the club D FC (hereinafter: D) signed an employment contract on 19 December 2003 valid as from 1 January 2004 until 31 December 2005; secondly that the club D and the club S (hereinafter: S) agreed on 24 December 2004 the transfer of the player on a loan basis and thirdly that the player and the club S signed an employment contract on 31 January 2005 valid as from 1 January 2005 until 31 December 2005.
5. In continuation, the members of the Chamber pointed out that the player and the K clubs have antagonistic positions.
6. On the one hand, the player alleged that based on the lack of medical treatment of his injury by the club S during the term of his loan and the negligent behaviour done by the club D, the player deemed that the relevant employment contracts were breached by each K club respectively.
7. On the other hand, both K clubs stated that the player breached the respective employment contracts by leaving K without authorization and not following the medical treatment prescribed by the doctors appointed by the club S.
8. At this stage, the members of the Chamber focused its attention to the player's allegation that he signed the employment contract with S under pressure and that by not signing the transfer agreement concluded between both K clubs the art. 10 of the Regulations was breached.
9. First and foremost, the Chamber pointed out that in accordance with the principle of burden of proof and for the sake of the legal security the player had to provide with evidences to sustain his allegation about signing the relevant employment contract with S under pressure. At this stage, the members of the Chamber concluded that the player only made an allegation but not submitted any evidences in this respect. Therefore the Chamber concluded that this player's allegation has to be rejected.
10. In continuation, the Chamber pointed out that by signing the employment contract with the club S, the player tacitly accepted the loan agreed between both K clubs. Therefore the Chamber concluded that the art. 10 of the Regulations was not breached.
11. Consequently, the Chamber stated that not only the loan agreement dated 24 December 2004 signed by both K clubs but also the employment contract dated 31 January 2005 signed between the player and the club S are valid.
12. The members of the Chamber focussed their attention to the fact that because the player deemed that he was not receiving the adequate medical treatment and

apparently his injury was not seriously considered by S he decided to left K and return to B.

13. At this stage, the members of the Chamber deemed appropriate to remark the general legal principle that the contracts are concluded to be respected otherwise consequences have to be assumed by the relevant party.
14. Moreover, the members of the Chamber took note that the relevant employment contract concluded between the player and the club S has a specific clause, i.e. art. 11, by means of which it is stipulated that in case the player would need medical treatment due to injuries, he should be treated at the hospital appointed by the club and in that case the club will cover the relevant expenses.
15. In this respect, the members of the Chamber pointed out that specific clauses established in valid employment contracts are binding and therefore have to be fulfilled by the parties involved, i.e. the player and the club S.
16. In addition, the Chamber deemed that based on the evidences submitted during the process of the matter at stake it was established that the club S did not neglect its contractual obligations with regard to the medical treatment to the player in case of an injury. Actually, the club S had a different point of view on how to deal with the injury than the player supporting the position that the player's injury had to be treated but not operated.
17. However, the members of the Chamber stated, that based in all the evidences and positions provided by the player and by the club S during the course of the matter at stake, it seems possible and reasonable that the aforementioned parties could have a strong conviction that the relevant injury should be faced in one or in the other way.
18. Moreover, the Chamber added that the circumstances relating to the player's health in the matter at stake could possibly have had an influence on his ability to take objective and appropriate decisions and that possibly also the language barrier could affected the player as well.
19. Furthermore, the members of the Chamber took note that the player left Kon 14 April 2005 and that he only played again for his new club in B on 12 January 2006 that means that he was 8 months inactive.
20. The members of the Chamber concluded that although it seems that by leaving K on 14 April 2005 without authorization of the club S to have a surgery in B instead of staying in K doing the medical treatment supported by the cited club, the player breached the employment contract dated 31 January 2005, it appears reasonable and equitable that the club S should contribute to pay the expenses and costs assumed by the player for going under surgery in B.
21. In continuation, the members of the Chamber decided to focused their attention to the letter submitted by the player to the club S dated 13 April 2005. In this respect the Chamber took note the player alleged that he signed the aforementioned document in a desperately situation and under the pressure of

the club S. In this respect, the Chamber reiterated that based on the principle of burden of proof and the legal security it was the player's obligation to ground his allegations and taking into account that he did not submit strong evidences in this respect the allegation in question has to be rejected.

22. Consequently, the Chamber stated that the letter dated 13 April 2005 addressed by the player to the club S is valid and that by means of which the player stated his intention to terminate the contract with S and to reimburse the monies received in accordance with the art. 15 of the relevant employment contract.
23. The Chamber focused its attention to the evidences of payments submitted by the club S and took note that the cited club proved having paid USD 64,713 in consideration for the services provided by the player directly. Furthermore, the Chamber considered that in accordance with the employment contract signed between the player and the club S, the aforementioned parties agreed on a monthly salary of USD 20,000. Moreover, the Chamber took note about the other amounts paid by the club S but concluded that cannot be taken into consideration for the reimbursement under the light of art. 15 of the relevant employment contract. As a result, the Chamber rejected the claims of the club S in this respect.
24. Subsequently, the Chamber considered that the player rendered his services to the club S as from January 2005 until middle of April, when he left without authorization. Moreover, the Chamber took into account that the player had medical expenses amounting to USD 32,138 and that the club S does not contest not having paid the entire salaries due to the player for the time he actually rendered his services to the cited club.
25. In continuation, the Chamber also considered, that the club S explained having paid the one airplane ticket to the player, as contractually agreed, and that the player neither contested this fact nor could corroborate the club's obligation to pay any additional airplane tickets.
26. In addition, the Chamber also considered that the player seems to have been unable to perform his sporting activity due to his injury since April 2005 until January 2006.
27. Consequently, and considering the specificity of the circumstances of the present affair, the members of the Chamber decided that equitably the player and the club S do not have to pay any amount to each other. As a result, the Chamber rejected the claims of the player as well as of the club S.
28. The Chamber turned its attention to the player allegations regarding the club D and in this respect took note that the player requests to declare D jointly responsible for the termination of the employment contract with S.
29. In this context, the members of the Chamber pointed out that, as a general rule, when a club transfers a player "on loan" to another club, the responsibilities of the former club are transferred to the new club either until the player would be back or until the loan is finished. Moreover, the Chamber underlined that an exception of the aforementioned rule is if both clubs agreed expressly that the

former club will assume specific responsibility for instance when the former club agrees to pay part of the salary of the player with the new club.

30. Consequently, the Chamber analyzed carefully the content of the transfer agreement concluded on 24 December 2004 between the club D and the club S and took note that there are no specific obligations or responsibilities assumed by the club D. The Chamber concluded that since the player was transferred on loan to the club S, the latter was the sole responsible as employer.
31. In addition, the members of the Chamber took note that even though D did not have responsibilities during the term of the loan during the process of the matter at stake it was clear that D was not informed formally about difficulties neither from the player nor from the club S.
32. In view of the foregoing, the members of the Chamber concluded that D did not breach any contract and therefore is not responsible to pay any monies to the player.
33. In continuation, the members of the Chamber focussed its attention to the request for damage compensation made by the club D based on the art. 20 of the employment contract concluded between them on 19 December 2003.
34. For the sake of clarification the Chamber remarked that the aforementioned article expressly states that if the player would leave the team without notice or would breach the contract, in that case the player should compensate by double the amounts that he received until the moment of the termination of the relevant contract.
35. The members of the Chamber reiterated that since the player was transferred "on loan" to the club S the obligations of D as employer were transferred to the new club and therefore D is not in a position to invoke any clause of the relevant employment contract or to claim any compensation from the player.
36. Therefore, the members of the Chamber decided that the claim of the club D for damage compensation has to be rejected.

### **III. Decision of the Dispute Resolution Chamber**

1. The claim of the Claimant, the player J, is rejected.
2. The counterclaim of the Respondent/Counter-Claimant, D FC, is rejected.
3. The counterclaim of the Respondent/Counter-Claimant, S FC, is rejected.

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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).

The full address and contact numbers of the CAS are the following:

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For the Dispute Resolution Chamber:

Jérôme Valcke

Secretary General

Encl.: CAS directives