Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 28 May 2010,

in the following composition:

Slim Aloulou (Tunisia), Chairman
Gerardo Movilla (Spain), member
David Mayebi (Cameroon), member
Essa M. Saleh Al-Housani (United Arab Emirates), member
Thilina Panditaratne (Sri Lanka), member

on the claim presented by the player,

D,

as *Claimant*

against the club,

A,

as *Respondent*

regarding an employment-related dispute between the parties

I. Facts of the case

1. On 23 December 2008, the player, D (hereinafter: *player* or *Claimant*), and the club A (hereinafter: *club* or *Respondent*) signed an employment contract valid as from 1 January 2009 until 30 May 2010.

2. In accordance with this contract, the Claimant was entitled to receive *inter alia* the following benefits from the Respondent:
    a. For the period 2008-09: EUR 1,250 payable in 5 monthly instalments of EUR 250;
    b. For the period 2009-10: EUR 20,000 payable in 10 monthly instalments of EUR 2,000;
    c. Accommodation not exceeding EUR 300 per month;
    d. Two air tickets to country F.

3. On 22 December 2008, a *"supplementary contract"* was signed between the Claimant and the Respondent, in accordance with which the Claimant was entitled to receive the following monies from the Respondent:
    a. For the period 2008-09: EUR 13,750 payable in 5 monthly instalments of EUR 2,750;
    b. For the period 2009-10: EUR 20,000 payable in 10 monthly instalments of EUR 2,000.

4. On 9 March 2009, the player lodged a claim against the club in front of FIFA maintaining that in the beginning of January 2009, the club had told him that it no longer counted on his services and invited him to return to country F.

5. In support of his claim, apart from the aforementioned contracts, the player presented a copy of a letter dated 18 February 2009 from the Football Association (FA) confirming that the player was registered as a professional with A on 12 January 2009.

6. Therefore, the Claimant claims that the employment contract was unilaterally terminated at the Respondent's fault and he claims compensation for breach of contract totalling EUR 60,000 composed as follows:
    a. EUR 55,000 relating to the contractual value;
    b. EUR 5,000 *ex aequo et bono* (including contractual fringe benefits and air tickets).

7. Furthermore, given that the breach occurred during the protected period, the Claimant asks that sporting sanctions be imposed on the Respondent.

8. The Respondent, for its part, rejected the claim maintaining that the *"supplementary agreement"* was not valid as it was signed prior to the employment contract.

9. Furthermore, the Respondent holds that the Claimant had informed it that he was an amateur player and given that the FA regulations allow for an unlimited number of amateur players, the club proceeded with the conclusion of the employment contract.

10. During the International Transfer Certificate (ITC) procedure, the club found out that the player in fact was a professional and due to the limited number of foreign professional player registrations, the player would have had no right to be qualified for the 2008-09 season.

11. Therefore, the Respondent rejects the claim for compensation and points out that for the 2009-2010 season the Claimant has no right to ask for compensation as he was employed elsewhere or has had the time to find other employment.

12. In his replica, the player points out that the *"supplementary agreement"* clearly refers to the employment contract and is valid and binding upon the parties. The date of the *"supplementary agreement"* is erroneous, which cannot have any legal effect as to its validity.

13. Furthermore, according to the Claimant, the Respondent has not presented any documentation in support of its position and he points out that clubs have the obligation to make the necessary verification prior to entering into contracts. He asserts having informed the club that he was not contractually bound to any other club.

14. The Respondent, in its duplica, reiterates its position and points out that the player apparently found other employment as the ITC was issued by the FA in favour of the Football Federation on 20 July 2009, as a result of which he cannot claim all of the contractual salaries.

15. On 16 July 2009, the player signed an employment contract with the club, M, valid until the end of the 2009-10 season, providing for a monthly remuneration of EUR 3,500.

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 9 March 2009, thus after 1 July 2008. 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 2009) 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 and a club.

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 2009), and considering that the present claim was lodged on 9 March 2009, the 2008 edition of the 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 this respect, the Chamber acknowledged that the Claimant and the Respondent signed an employment contract on 23 December 2008 valid as from 1 January 2009 until 30 May 2010 and, on 22 December 2008, a *"supplementary agreement"*, a copy of both of which was presented by the Claimant along with his statement of claim, in accordance with which the player was entitled to receive the total monthly remuneration of EUR 3,000 during 5 months for the 2008-09 season and of EUR 4,000 during 10 months for the 2009-10 season.

5. In continuation, the Chamber noted that according to the Respondent the *"supplementary agreement"* is not valid as it was signed prior to the employment contract. In this regard, after careful examination of the aforementioned contracts, the Chamber first of all noticed that the *"supplementary agreement"*, which contains the same period of validity as the employment contract, clearly refers to the employment contract by means of the inclusion of the following

phrases: *"The present agreement, dated 22/12/2008, … is a supplementary agreement of the contract dated 22/12/2008."* … *"Despite the agreement dated the 22/12/2008, the Club agrees to pay to the Football Player …"*. Furthermore, the members of the Chamber agreed that the different dates indicated in the contracts, which difference could be the result of a clerical error, do by no means invalidate the *"supplementary agreement"*, which was undoubtedly signed by both parties to the dispute, and, consequently, the Chamber had to reject the Respondent's argument in this respect.

6. The Chamber then reviewed the claim of the Claimant, who maintains that the Respondent had acted in breach of contract by informing him in the beginning of January 2009 that the club did no longer count on his services and by inviting him to return to country F. The Respondent, for its part, rejects the claim and holds that the Claimant had informed the club that he was an amateur player, as a result of which it entered into an employment contract with the player in accordance with the FA regulations relating to amateur players. The Respondent having subsequently found out that the player was in fact a professional, the player would have had no right to be qualified for the 2008-09 season. In addition, the Respondent submits that the Claimant has no right to ask for compensation as either he must have been employed elsewhere or he has had time to find other employment.

7. With respect to the Respondent's argumentation, the Chamber first and foremost deemed it important to stress that a player's prospective club is required to undertake all necessary research and to take all appropriate steps before concluding a contract with a player.

8. The Respondent's defence is solely based on the allegation that the Claimant had allegedly informed the club that he was an amateur player, whereas in reality he was a professional. In this regard, the Chamber noted that the Respondent failed to present any documentation corroborating such allegation in accordance with art. 12 par. 3 of the Procedural Rules, which stipulates that any party claiming a right on the basis of an alleged fact shall carry the burden of proof. Regardless of the accuracy of such allegation, the Chamber deemed that, in line with the foregoing consideration, if the Respondent had considered the status of the player to be of paramount importance, the Respondent could have been expected to investigate in greater depth such status instead of solely relying on the Claimant's statement.

9. In addition, and notwithstanding the aforementioned remarks regarding the diligence a club has to show, the members of the Chamber duly took note of the documentation put forward by the Claimant in support of his position, in

particular, the letter dated 18 February 2009 issued by the Football Association confirming that the player was registered as a professional with the Respondent on 12 January 2009. Such confirmation is evidently in contradiction with the Respondent's statement that in the light of the professional status of the player, he could not have been qualified for the 2008-09 season due to the limited number of foreign professional player registrations under the FA regulations.

10. In addition, the Chamber recalled the contents of art. 2 par. 2 of the Regulations, according to which a professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs (emphasis added). Thus, the Chamber wondered why the Respondent would have entered into an employment contract with a supposedly amateur player, since amateur players are not bound to a club by means of a written contract.

11. In any case, the members of the Chamber took the view that the reason put forward by the Respondent in its defence, i.e. the player being a professional rather than an amateur player, cannot be supported by any convincing evidence and cannot be considered a just cause to prematurely terminate the employment contract.

12. For all these reasons and bearing in mind that the two contracts had been validly concluded by the parties to the dispute, the Chamber decided to reject the Respondent's arguments and to accept the Claimant's argumentation according to which the Respondent had terminated the employment contract without just cause in January 2009.

13. Having established that the Respondent is to be held liable for the early termination of the employment contract without just cause, the Chamber focussed its attention on the consequences of such breach of contract. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive from the Respondent an amount of money as compensation for breach of contract in addition to any outstanding payments on the basis of the relevant employment contract.

14. First of all, the Chamber recalled that the employment contract at the basis of the present dispute was terminated by the Respondent shortly after the entry into force of such contract. The Claimant undisputedly was at the service of the Respondent in January 2009, i.e. the month in which the employment contract entered into force and in which the employment contract was terminated by the Respondent, and, therefore, the Chamber decided that in virtue of the principle *pacta sunt servanda* the Claimant is entitled to receive his salary for the month of

January 2009 in the total amount of EUR 3,000 in accordance with the employment contract and the *"supplementary agreement"*.

15. Consequently, the Chamber decided that the Respondent is liable to pay to the Claimant the amount of EUR 3,000 relating to the Claimant's salary for January 2009.

16. In continuation, the Chamber focussed its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

17. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contains a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. The Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

18. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that the said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body.

19. On this basis, the members of the Chamber once more highlighted that the early termination of the employment contract occurred shortly after the entry into force of such employment contract. The Chamber deemed that it should consider this fact in determining the amount of compensation to be paid by the Respondent.

20. Equally, and in order to evaluate the compensation to be paid by the Respondent, the members of the Chamber took into account *inter alia*, in line with art. 17 par.

1 of the Regulations, the remuneration due to the Claimant in accordance with the contracts as well as the time remaining on the same contracts, as well as the professional situation of the Claimant after the early termination occurred.

21. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract and the *"supplementary agreement"* until 30 May 2010, taking into account that the player's salary for January 2009 is included in the calculation of the outstanding remuneration (cf. no. II./15. above). Consequently, the Chamber concluded that the amount of EUR 52,000 (i.e. 14 monthly instalments as from February 2009 until May 2010) serves as the basis for the final determination of the amount of compensation for breach of contract.

22. Indeed, on 16 July 2009, the Claimant found employment with the club, M. In accordance with the pertinent employment contract, which has been made available by the Claimant, valid until the end of the 2009-10 season, the Claimant was entitled to receive a monthly salary of EUR 3,500. Consequently, in accordance with the constant practice of the Dispute Resolution Chamber and the general obligation of the player to mitigate his damages, such remuneration under the new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract.

23. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Respondent must pay not the entire residual value of the contracts but the amount of EUR 15,250, which was to be considered reasonable and justified as compensation for breach of contract.

24. As regards the Claimant's request to be awarded EUR 5,000 *ex aequo et bono* relating to fringe benefits and air tickets, the Chamber took into account that the documentation presented by the Claimant in support of his claim, i.e. two invoices addressed by a travel agency to a company in country B referring to the Claimant, do not sufficiently corroborate that the Claimant had in fact paid for air tickets himself (cf. art. 12 par. 3 of the Procedural Rules). Furthermore, in the light of the fact that the employment contract was considered terminated in the same month as the month in which such contract entered into force and the Claimant, thus, not having had the need to be accommodated, in accordance with the constant jurisprudence of the Dispute Resolution Chamber, the Chamber decided not to take into account any benefits relating to accommodation in order to calculate the monies payable to the Claimant in the specific case at hand.

25. In conclusion, the Chamber decided to partially accept the claim of the Claimant and that the Respondent is liable to pay the total amount of EUR 18,250 to the Claimant, consisting of EUR 3,000 relating to the outstanding salary for January 2009 and EUR 15,250 as compensation for breach of contract.

26. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claims lodged by the Claimant are rejected.

III. Decision of the Dispute Resolution Chamber

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

2. The Respondent, A, has to pay to the Claimant the amount of EUR 18,250 within 30 days as from the date of notification of this decision.

3. In the event that the aforementioned amount is not paid within the stated time limit, interest at the rate of 5% *p.a.* will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.

4. Any further request filed 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. 63 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
www.tas-cas.org

For the Dispute Resolution Chamber:

Jérôme Valcke
Secretary General

Encl.: CAS directives