Decision of the
Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 29 August 2011,

by **Mr Philippe Diallo** (France), DRC judge,

on the claim presented by the player,

D,

as *Claimant*

against the club,

P,

as *Respondent*

regarding an employment-related contractual dispute
arisen between the parties

I. Facts of the case

1. On 22 June 2010, the player D (hereinafter: *the player or Claimant*), and the club P (hereinafter: *the club or Respondent*), signed an employment contract (hereinafter: *the contract*) valid as from 1 July 2010 until 31 May 2011, i.e. 11 months.

2. According to art. 2 and 5 of the employment contract, the club undertakes to pay the player the following amounts for the season 2010/2011:
   - EUR 67,000 net, payable in ten equal instalments of EUR 5,700, as from 31 August 2010 and at the last day of each subsequent month, until 31 May 2011;
   - EUR 5,000 as a deposit, once the player has passed his medical exams;
   - EUR 5,000 as a deposit, once the player's ITC arrives at the Football Association C and not later than 23 July 2010;
   - EUR 10,000 if the club, at the end of the regular season, reaches positions 1-4;
   - EUR 600 as rent allowance;
   - a middle class car;
   - one family return ticket;
   - all bonuses included in the Internal Regulations of the Club, in the amount of EUR 500 per winning game.

3. Article 7 of the contract further stipulates that *"The player declares upon signing of the present agreement, he receives and accepts the Internal Regulations of the Club and acknowledges that he is fully bound by them"*.

4. In addition, art. 15 of the contract establishes that *"in case the club plays for any reason, during the validity of the player's employment contract with P, in the second or lower division of the League of country C, the club has the right to terminate the player's contract […] and the player, in that event, accepts that such termination is for just cause and shall not be entitled to any compensation"*.

5. On 1 April 2011, the player lodged a claim in front of FIFA against the club for breach of contract without just cause, since it had not paid his salaries for the last four months. Therefore, the player considers the contract to be terminated as of 1 April 2011 and requests the total amount of EUR 41,600, made up of:
   - EUR 24,500 of outstanding salaries for November 2010 (EUR 1,700), December 2010 (EUR 5,700), January 2011 (EUR 5,700), February 2011 (EUR 5,700) and March 2011 (EUR 5,700);
   - EUR 2,400 in rent expenses for December 2010 until March 2011;
   - EUR 600 as a deposit;
   - EUR 1,500 of premiums for three winning matches of EUR 500 each;

- EUR 12,600 as compensation for the club's breach of contract, corresponding to his monthly salaries for April and May 2011 (EUR 11,400), as well as the corresponding rent expenses (EUR 1,200).

6. The player provided copies of the two letters sent to the club on 1 December 2010 and 1 March 2011, informing it of its arrears of payments for the period from September 2010 until February 2011, rent for the months of December 2010 to February 2011, bonuses for three winning games and a deposit of EUR 600.

7. After the closure of the investigations-phase in the present matter, the club P submitted its position regarding the player's claim. The club acknowledged its debt in the amount of EUR 11,300 towards the player, made up of:
   - EUR 2,300, corresponding to the partial salary of November 2010;
   - EUR 5,700, corresponding to the salary of December 2010;
   - EUR 1,500 as bonus for three winning matches;
   - EUR 1,800 of rent allowance.

8. The club, however, points out that, according to the Internal Regulations of the club – by which the player has to abide, as per art. 7 of the employment contract cited in point 3 above –, in case the club is relegated to the second division, all players are obliged to pay the club the amount corresponding to three monthly salaries.

9. In addition, in case of a relegation to the second division during the player's contract with the club, the latter would have the right to terminate the contract, with just cause, and the player would not be entitled to any compensation, according to art. 15 of the contract, cited in point 4 above.

10. In this respect, the club stated that it was relegated to the second division in March 2011 and, thus, the player shall not be entitled to receive the salaries of January 2011, February 2011 and March 2011, and the club shall be entitled to terminate the employment contract with just cause, without paying any compensation to the player.

11. Finally, the player informed our services that he did not sign any new employment contract as of 1 April 2011 until 31 May 2011.

II. Considerations of the DRC judge

1. First of all, the DRC judge analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was submitted to FIFA on 1 April 2011. Consequently, the 2008 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) is applicable to the matter at hand (cf. art. 21 par. 2 and par. 3 of the Procedural Rules).

2. Subsequently, the DRC judge referred to art. 3 par. 2 and 3 of the Procedural Rules and confirmed that, in accordance with art. 24 par. 1 and 2 in conjunction with art. 22 lit. (b) of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*), he is competent to decide on the present litigation, which concerns an employment-related dispute with an international dimension between a player from country B and a club from country C.

3. Furthermore, the DRC judge analysed which edition of the Regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations (edition 2010) and considering that the present matter was submitted to FIFA on 1 April 2011, the 2010 edition of said Regulations is applicable to the present matter as to the substance.

4. The competence of the DRC judge and the applicable regulations having been established, the judge entered into the substance of the matter. In doing so, he started to acknowledge the facts of the case as well as the documents contained in the file.

5. In this respect, the DRC judge acknowledged that it was undisputed by the parties that they signed an employment contract on 22 June 2010, in accordance with which the player was entitled to receive, *inter alia*, a monthly remuneration of EUR 5,700, EUR 600 as rent allowance and bonus in the amount of EUR 500 per winning game.

6. The DRC judge further noted that the Claimant claims that the Respondent has breached the contractual relationship without just cause, since the latter had failed to pay his partial salary for November 2010, his salaries for the period of December 2010 until March 2011, rent expenses for December 2010 until March 2011, a deposit of EUR 600 and premiums for three winning matches.

7. Therefore, the Claimant requests the payment of the total amount of EUR 41,600, made up of EUR 24,500 of outstanding salaries for November 2010 until March

2011; EUR 2,400 in rent allowances for the months of December 2010 until March 2011; EUR 600 as a deposit; EUR 1,500 of premiums for three winning matches of EUR 500 each; EUR 12,600 as compensation for the period of April until May 2011, corresponding to his monthly salaries plus rent allowances for the aforementioned months.

8. On the other hand, the DRC judge noted that, in its allegations, the Respondent acknowledged having a debt towards the Claimant in the amount of EUR 11,300, made up of the player's partial salary of November 2010, his salary of December 2010, bonuses for three winning matches and unspecified rent expenses in the amount of EUR 1,800.

9. In addition, the Respondent alleges having been relegated to the second division of the League from country C and, therefore, it should be entitled to retain the player's salaries for three months – namely January, February and March 2011 – and to terminate the player's contract without paying him any type of compensation, as per art. 7 and 15 of the employment contract, respectively.

10. Having established the aforementioned, the DRC judge deemed that the underlying issue in this dispute, considering the claim of the player, was to determine whether the employment contract had been unilaterally terminated with or without just cause and which party was responsible for the early termination of the contractual relationship in question. The DRC judge also underlined that, subsequently, if it were found that the employment contract had been breached by the Respondent without just cause, it would be necessary to determine the financial and/or sporting consequences for the party that caused the unjust breach of the relevant employment contract.

11. In view of the foregoing, the DRC judge recalled the wording of art. 7 and 15 of the contract. While art. 7, referring to the Internal Regulations of the Club, establishes that all players are obliged to pay the club the amount corresponding to three monthly salaries, in case the club is relegated to the second division, art. 15 stipulates that, in this situation, the club shall also be entitled to terminate the employment contract with the player, with just cause and without paying him any type of compensation.

12. In this regard, and in view of the wording of said articles, the DRC judge deemed it appropriate to analyze whether such clauses inserted in an employment contract could be considered as valid at all.

13. Firstly, the DRC judge took into account the disposition of art. 7 of the contract and, in this respect, he pointed out that the remuneration of a player is a contractually

agreed financial compensation for the services provided to the club, corresponding to a specific period of time. The DRC judge equally noted that said financial compensation consists of a fixed amount payable on a monthly basis to the player, and is not subject to any external conditions, especially not to a successful sporting performance of the club and, thus, will not be considered.

14. With regard to art. 15 of the contract, the DRC judge deemed that the aforementioned article was, in its turn, ambiguous and that its application was arbitrary, since it entitles the Respondent to unilaterally terminate the contract in case the Respondent plays for the second or lower division of the League from C.

15. In this regard, the DRC judge considered that the possibility granted to the Respondent to prematurely terminate the contract based on the club's relegation to a lower division is of subjective nature, entailing that, *de facto*, it is left to the complete and utter discretion of the Respondent whether or not it was willing to continue the contractual relationship. The DRC judge emphasized that the lack of objective criteria by the application of the relevant article leads to an unjustified disadvantage of the Claimant's financial rights.

16. In view of the foregoing, the DRC judge was of the opinion that art. 7 and 15 of the contract, invoked by the Respondent in order to justify the non-payment of the players' salaries for three months and to end the contract without paying the Claimant any kind of compensation, were clearly potestative and, consequently, the respective argumentation of the Respondent could not be upheld by the DRC judge. As a consequence, the DRC judge concluded that the Respondent is responsible for the breach of the employment contract without just cause.

17. Having established that the Respondent is to be held liable for the early termination of the employment contract without just cause, the DRC judge focused his 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 until the date on which the contract was terminated.

18. On account of the above, the DRC judge went on firstly to establish the exact outstanding amount due to the Claimant by the Respondent at the moment of termination.

19. In this respect, the DRC judge recalled that, according to the Claimant, the outstanding amount of EUR 29,000, corresponding to salaries for November 2010 until March 2011, rent expenses for December 2010 until March 2011, a deposit of EUR 600 and premiums for three winning matches had remained unpaid by the Respondent by the time the contract was terminated.

20. Furthermore, the DRC judge noted that the Claimant had sent two letters to the club on 1 December 2010 and 1 March 2011, informing the club of its arrears of payments for the period from September 2010 until February 2011, rent for the months of December 2010 to February 2011, bonuses for three winning games and a deposit of EUR 600. The Chamber highlighted that the validity of these letters was never disputed by the Respondent.

21. In this respect, the DRC judge noted that the Respondent had not contested the allegations of the Claimant, according to which he had not received part of his salary of November 2010, nor his salaries for the months of December 2010 until March 2011. The DRC judge recalled that, on the contrary, the Respondent declared its will to pay outstanding salaries in the amount of EUR 11,300, corresponding to November and December 2010, as well as bonus and rent allowance.

22. Bearing in mind the foregoing, the DRC judge proceeded to the calculation of the monies payable under the terms of the player's employment contract. In this respect, the DRC judge acknowledged that the player was entitled to receive a monthly salary of EUR 5,700, an allowance of EUR 600 to cover the accommodation and all bonuses included in the Internal Regulations of the Club, in the amount of EUR 500 per winning game.

23. Since the refusal of the Respondent to pay the Claimant the amount corresponding to his salaries and the rent allowances for January to March 2011 was based exclusively on art. 7 and 15 of the contract, which were considered not applicable by the DRC judge, the latter concluded that the Respondent failed to remit the Claimant his partial salary for November 2010, his salaries for December 2010 until March 2011, rent expenses for December 2010 until March 2011 and bonuses for three winning matches.

24. The contractual basis of the deposit of EUR 600, however, was neither duly specified by the Claimant nor could it be identified. The DRC judge at this point referred to 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, and pointed out that no documentary evidence that the Respondent would be liable to pay the aforementioned amount was presented by the Claimant. Hence, in the light of art.

12 par. 3 of the Procedural Rules the unspecified deposit of EUR 600 cannot be granted to the player.

25. As a result, the DRC judge concluded that the Claimant was entitled to receive from the Respondent the total amount of EUR 28,400, corresponding to his partial salary for November 2010, his salaries for December 2010 until March 2011, rent expenses for December 2010 until March 2011 and bonuses for three winning matches.

26. On account of the foregoing, the DRC judge also held that the Respondent was not only to pay the outstanding remuneration to the Claimant, but also to pay compensation for breach of contract. In continuation, the DRC judge focused his attention on the calculation of the amount of compensation for the unjustified breach of contract in the case at stake. In doing so, the DRC judge 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.

27. In application of the relevant provision, the DRC judge held that he first of all had to clarify as to whether the pertinent employment contract contained 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 DRC judge established that no such compensation clause was included in the contract at the basis of the matter at stake.

28. As a consequence, the DRC judge 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 DRC judge 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.

29. The DRC judge 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 employment contract as well as the time remaining on the same contract and the professional situation of the Claimant after the early termination occurred.

30. Bearing in mind the foregoing, the DRC judge proceeded with the calculation of the monies payable to the player under the terms of the employment contract until 1 April 2011. In this regard, the DRC judge considered that the player requested the remaining value of the relevant employment contract, *i.e.* the salaries due until 31 May 2011, as well as his rent allowances for April and May 2011, as compensation in the amount of EUR 12,600.

31. Furthermore, the DRC judge took into account that the player had not signed any employment contract with another club since the termination until 31 May 2011.

32. In this respect, the DRC judge decided that the entire remaining value of the contract, corresponding to his salaries and rent expenses for the months of April and May 2011, amounting to EUR 12,600, was to be considered reasonable and justified as compensation for breach of contract.

33. For all the above reasons, the DRC judge decided to partially accept the claim of the Claimant and holds the Respondent liable to pay the player the total amount of EUR 41,000, made up of outstanding salaries for the months of November 2010 to March 2011 (EUR 24,500), rent expenses for December 2010 until March 2011 (EUR 3,600); premiums for three winning matches (EUR 1,500) and compensation for the breach of contract for the period of April until May 2011 (EUR 12,600).

34. The Chamber concluded its deliberations in the present matter by establishing that any further claims of the Claimant are rejected.

III. Decision of the DRC judge

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

2. The Respondent, P, has to pay to the Claimant, D, the amount of EUR 41,000 **within 30 days** as from the date of notification of the present decision.

3. If the aforementioned sum is not paid within the above-mentioned time limit, an interest rate of 5% p.a. will apply on the said amount as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for its consideration and a formal decision.

4. Any further claims lodged by the Claimant, D, are rejected.

5. The Claimant, D, is directed to inform the Respondent, P, immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge 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:

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For the DRC judge

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