Decision of the
Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 14 August 2013,

by Mr **Theo van Seggelen** (The Netherlands), DRC judge,

on the claim presented by the player

Player T, from country H

as *Claimant*

against the club

Club S, from country C

as *Respondent*

regarding an employment-related dispute
between the parties

I. Facts of the case

1. On 16 June 2010, the player T, from country H (hereinafter: *the Claimant*), and the Club S from country C, (hereinafter: *the Respondent*), signed an employment contract (hereinafter: *the contract*), valid from 15 June 2010 until 15 June 2012.

2. According to art. 4 of the contract, the Claimant was entitled to the following remuneration:
   Season 2010/2011:
   - EUR 5,000 net due on 1 July 2010;
   - EUR 5,000 net due on 1 December 2010;
   - EUR 5,000 net due on 15 February 2011;
   - EUR 5,000 net due on 1 April 2011.

   Season 2011/2012:
   - EUR 5,000 net due on 1 July 2011;
   - EUR 5,000 net due on 1 December 2011;
   - EUR 5,000 net due on 15 February 2012;
   - EUR 5,000 net due on 1 April 2012.

   In addition to the aforementioned values, the Claimant was also entitled to the following:
   - EUR 1,000 net as a minimum monthly salary;
   - 2,000, approximately EUR 277 as a monthly *"feeding allowance"*.

3. Art. 11, 2) of the contract provided that *"the Club has a right to breach the contract under the following conditions: In case of the player T leave before the expiration of this Contract in some foreign or domestic club, the player is obliged to return what was invested into him"*.

4. On 8 April 2011, the Claimant lodged a claim against the Respondent before FIFA, for the breach of contract without just cause by the Respondent, claiming the total amount of EUR 61,700 plus 5% interest as from 1 October 2010 as follows:
   - the payment of all *"outstanding remunerations as compensation"* until the end of the contract in the amount of EUR 21,000, equivalent to 21 minimum monthly salaries of EUR 1,000 each from September 2010 until June 2012;
   - EUR 15,000 composed of 3 instalments of EUR 5,000 each as from 1 December 2010, due for the season 2010/2011;
   - EUR 20,000 for the season 2011/2012;
   - EUR 5,700 which corresponds approximately to 42,000, composed of 21 monthly feeding allowances of 2,000 each;
   - Sporting sanctions.

5. In this respect, the Claimant stated that he reminded the Respondent several times that his *"visa"* had expired on 27 August 2010. Consequently, on 22 September 2010, the Claimant and another team member *"were controlled by the country C police after*

playing a national cup match in country C in regards to the working permit" and invited for a hearing held on 29 September 2010 at the police station. During the hearing, the Respondent's director allegedly informed to be aware that the player's *"work permit"* had expired and that the new work permit application was in process, requesting, therefore, that he would not be expelled from the country.

6. Nonetheless, on 1 October 2010, the police fined the Claimant approximately EUR 1,000 *"for violation against the employment and foreigner's work regulations",* which were *"probably paid by the Respondent"*. Furthermore, the Claimant was *"banned with a three-months-period to stay out of country C"* and ordered to leave the country within 15 days.

7. In particular, the Claimant held that, as a consequence, he left the country on 2 October 2010 since the Respondent failed to arrange a work permit as well as the payment of his remunerations after his *"deportation"*. The Claimant returned to country C after 3 months and, on 10 January 2011, was informed by the Respondent that *"it does not count on his services anymore"*.

8. On 11 January 2011, the Respondent provided the Claimant with a document named *"Agreement on the Termination of a Professional Contract"* (hereinafter: *the termination agreement*), which asserted that *"all mutual claims and obligations of the Club towards the player and from the player towards the Club are settled"* signed by the Respondent and dated 4 October 2010, which the Claimant refused to sign.

9. The Claimant asserted having insisted with the Respondent to receive a written explanation to why he no longer was allowed to train with the team, however, the Respondent apparently did not answer. Therefore, the Claimant left the country and informed the Respondent in writing on 20 January 2011, that *"he considers that the contract has been terminated by the Respondent's handling"*. Moreover, the Claimant asserted that the Respondent breached the contract without just cause, since it had not paid the salaries as from *"1 October 2010 until 20 January 2011 for 4 salaries of EUR 1,000 (September, October, November and December 2010) total EUR 4,000",* the instalment of EUR 5,000 due on 1 December 2010 as well as failed to arrange his visa.

10. Finally, the Claimant stated having found a new club, however, due to the fact the Respondent allegedly refused the issuance of an International Transfer Certificate (ITC), he was not hired.

11. In its reply, the Respondent rejected the claim and held that the breach of contract *"came by the guilt of the accuser, who didn't fulfil suppositions anticipated by the Law"*. In this respect, the Respondent asserted that it was the Claimant's obligation to arrange his working permit and the Claimant was not able to fulfil his contractual obligations. In this respect, the Respondent issued the termination which the Claimant

refused to sign and attested that all obligations towards the Claimant were fulfilled until 1 October 2010.

12. In addition, the Respondent mentioned that the Claimant was not allowed to stay in the country due to alleged outstanding tax obligations of 80,000. The Respondent provided an internal payment plan and informed that it could not disclose the Claimant's personal data on tax and other obligations affirming that *"the accuser must be asked about that circumstance"*.

13. In his replica, the Claimant alleged that it is the Respondent's obligation to provide a work permit. In this respect, the departure from country C and the contractual breach occurred duly to the Respondent's failure in processing said work permit. In particular, the Claimant confirmed his denial in signing the termination, since he did not accept a premature termination of the contract without the payment of any compensation.

14. In its final position, the Respondent stated that the contract between the Claimant and the Respondent is not an employment contract, but a contract by which the Claimant *"as a person with a registered independent activity as an athlete offers services to club S"*. In this respect, according to the Respondent, as determined by *"the Regulations of the Republic of country C, the person who hasn't paid the tax liabilities, can't get the working permit, neither can the plaintiff- the player registered as an independent activity of an athlete"*. Consequently, the Respondent alleged that it should not be held responsible for the Claimant's failure in honoring his tax liabilities in country C.

15. The Claimant informed FIFA that he found employment as from 5 July 2011 until 30 June 2012 with the country H club, club X, for the monthly remuneration of EUR 1,022. The Claimant further asserted that the total remuneration to be considered for compensation deductions is of EUR 11,753 since the contract with the Respondent would have been valid until 15 June 2012.

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 8 April 2011. Consequently, the 2008 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) is applicable to the matter at hand (cf. article 21 par. 2 and 3 of the Procedural Rules).

2. Subsequently, the DRC judge referred to art. 3 par. 2 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players the DRC judge 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 DRC judge analysed which edition of the Regulations on the Status and Transfer of Players 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 on the Status and Transfer of Players (editions 2012 and 2010), and considering that the claim was lodged on 8 April 2011, the 2010 edition of the said regulations is applicable to the matter at hand as to the substance (hereinafter: *the Regulations*).

4. The competence of the DRC judge and the applicable regulations having been established and entering into the substance of the matter, the DRC judge acknowledged the above-mentioned facts as well as the documentation contained on the file.

5. In this respect, the DRC judge took due note that the Claimant lodged a claim against the Respondent for breach of contract without just cause and requested the payments by the Respondent of the total amount of EUR 61,700 plus default interest of 5% *p.a.* as from 1 October 2010 as well as sporting sanctions.

6. In this regard, the DRC judge noted that the above mentioned amount was composed of EUR 21,000 as minimum salary of EUR 1,000 each due for September 2010 until the expiry of the contract in June 2012; EUR 15,000 composed of three instalments of EUR 5,000 each, due on 1 December 2010, 15 February 2011 and 1 April 2011; EUR 20,000 due for season 2011/2012 and EUR 5,700 composed of 21 monthly feeding allowance as stipulated in the employment contract signed between the parties.

7. Furthermore, the DRC judge acknowledged that the Claimant alleged having informed the Respondent of his working visa expiry in August 2010 as well as of the immigration police control of 22 September 2010, which banned him from country C for a period of three months. The DRC judge also understood that due to the ban, the Claimant departed the country and after returning three months later, the Respondent terminated the contract on 11 January 2011 in writing, which the Claimant refused to sign.

8. On the other hand, the DRC judge acknowledged that the Respondent rejected the Claimant's claim by alleging that the breach committed was on behalf of the Claimant, since he neither fulfilled his contractual obligations nor did he arrange a working visa on his own. Furthermore, the Respondent argued that the Claimant was banned from the country due to unpaid tax liabilities. Finally, the Respondent stated that the contract signed between the parties was not an employment contract.

9. After due consideration of the argumentation provided by the parties the DRC judge first and foremost, focussed his attention on the question as to whether a legally binding employment contract had been concluded by and between the Claimant and the Respondent. In the affirmative, the DRC judge will have to establish as to whether the relevant employment contract was breached and, if so, which party is to be held liable for breach of contract and which are the consequences thereof.

10. Having stated the aforementioned, the DRC judge wished to highlight that in order for an employment contract to be considered as valid and binding, apart from the signature of both the employer and the employee, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship, the remuneration. After careful study of the contract presented by the Claimant, the DRC judge concluded that all such essential elements are included in the pertinent employment contract, in particular, the fact that the contract establishes that the Claimant has to render his services towards the Respondent, which in counterpart has to pay to the Claimant a monthly remuneration.

11. In this regard, after having established the validity of the employment contract signed between the parties, the DRC judge considered the argumentation brought up by the Respondent concerning the fact that it was the Claimant's obligation to arrange a working visa and recalled that according to the Dispute Resolution Chamber's constant jurisprudence the responsibility to obtain the necessary work permit or visa prior to the signing of the employment contract or during its period of validity, as it is the case in the matter at hand, is incumbent on the club, i.e. the Respondent.

12. Consequently, the DRC judge noted that after the Claimant's return to country C in January 2011, the Respondent proceeded to terminate the contract on 11 January 2011 based on a document dated 4 October 2010, according to which *"all mutual claims and obligations of the Club towards the player and from the player towards the Club are settled"* which the Claimant refused to sign. In this respect, the DRC judge understood that the Claimant could not carry out his contractual obligations based on the fact that the employer had not provided him with the adequate document to guarantee his stay until the expiry of the contract, i.e. his work visa.

13. Moreover, the DRC judge referred the parties to art. 12 par. 3 of the Procedural Rules, which establishes that any party claiming a right on the basis of an alleged fact shall carry the burden of proof and proceeded to analyse the argumentation brought up by the Respondent regarding that the Claimant's responsibility for the payment concerning his tax obligations in country C and that the failure to do so would result in the denial of the issuance of a working visa. In this regard, the DRC judge decided that the Respondent failed to provide enough substantial documentary evidence for such argumentation, since the latter did not provide any document at all.

14. Therefore the DRC judge rejected the arguments provided by the Respondent and considered that the contractual breach was committed based on the Respondent's fault.

15. Having established that the Respondent was to be held liable for breach of the employment contract without just cause, the DRC judge focussed its attention on the consequences of such breach of contract.

16. Taking into consideration art. 17 par. 1 of the Regulations, the DRC judge 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.

17. On account of the above, the DRC judge held that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent must fulfill its obligations as per the employment contract concluded with the Claimant and, consequently, pay the outstanding remuneration, which is due to the latter.

18. In this respect, the DRC judge noted that the Claimant honoured the contract and that the Claimant's forced departure from country C, based on the Respondent fault, did not justify the non-payment by the Respondent of the monthly salaries due to the Claimant. In this regard, the DRC judge considered that the contractual termination occurred by the Respondent on 11 January 2011 (cf. point II. 12. above), and therefore, acknowledged that the Claimant would be entitled to outstanding salaries as of September 2010 until 11 January 2011.

19. As a consequence, the DRC judge deemed that on the basis of the documents on file, the Respondent had not paid the Claimant's outstanding salaries of EUR 1,000 each as minimum monthly salary due for September 2010 until December 2010; EUR 5,000 due on 1 December 2010, EUR 272 each as rent allowance due for September 2010 until December 2010, EUR 355 as a partial monthly salary of January 2011 and EUR 97 as rent allowance for 11 days in January 2011, i.e. considering the termination date.

20. On account of all of the above, the DRC judge considered it to be established that the Respondent had not paid the Claimant the total amount of EUR 10,540 as outstanding salaries.

21. In continuation, the DRC judge noted that the Claimant furthermore claimed 5% interest *p.a.* as of 1 October 2010, i.e. date of which the salary of September 2010 was due.

22. Concerning the interests claimed by the Claimant, the DRC judge noted that the contract did not provide for any specific interest rate in case of late payment. Consequently, the DRC judge decided to award, in accordance with the constant

practice of the Dispute Resolution Chamber, default interest at a rate of 5% *p.a.* as requested by the Claimant, and decided to award such default interest rate as from the first day after the respective due dates of each installment.

23. In conclusion, the DRC judge decided that the Respondent has to pay the total amount of EUR 10,540 as outstanding remuneration plus 5 % interest *p.a.* until the date of effective payment as follows:
    - 5% interest *p.a.* as of 1 October 2010 over the amount of EUR 1,272;
    - 5% interest *p.a.* as of 1 November 2010 over the amount of EUR 1,272;
    - 5% interest *p.a.* as of 1 December 2010 over the amount of EUR 1,272;
    - 5% interest *p.a.* as of 2 December 2010 over the amount of EUR 5,000;
    - 5% interest *p.a.* as of 1 January 2011 over the amount of EUR 1,272;
    - 5% interest *p.a.* as of 1 February 2011 over the amount of EUR 452.

24. In continuation, the DRC judge analysed the request of the Claimant for compensation. 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.

25. In application of the relevant provision, the DRC judge held that it first of all had to clarify as to whether the pertinent employment contract contains a provision by which the parties had beforehand agreed upon an amount of compensation payable by either contractual party in the event of breach of contract. In this respect, the Chamber established that no such compensation clause was included in the employment contract.

26. 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 DRC judge.

27. In order to evaluate the compensation to be paid by the Respondent, 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 and the time remaining on the same contract, as well as the professional situation of the

Claimant as from the early termination of the employment contract as from 12 January 2011 until 15 June 2012.

28. In continuation, the DRC judge noted that the Claimant, for his part, claims compensation for breach of contract until the expiry of the contract.

29. Considering the above, the DRC judge recalled that the Claimant entered into a new employment contract valid as from 5 July 2011 until 30 June 2012 with the country H club, club X, for the monthly salary of EUR 1,022. Therefore, the DRC judged understood, that since the Claimant would have been entitled to receive a total remuneration of EUR 51,160 until the expiry of the contract and has been able to mitigate his losses in the amount of EUR 11,753 based on the new employment contract with club X. As a consequence, the DRC judge decided to condemn the Respondent to pay the Claimant as compensation the amount of EUR 39,407 plus 5% interest *p.a.* as of the date of the decision.

30. The DRC judge concluded its deliberations in the present matter by establishing that any further claims lodged by the Claimant are rejected.

III. Decision of the DRC judge

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

2. The Respondent, Club S, has to pay to the Claimant, T, **within 30 days** as from the date of notification of this decision, the outstanding amount of EUR 10,540 plus 5 % interest *p.a.* until the date of effective payment as follows:
   - 5% interest *p.a.* as of 1 October 2010 over the amount of EUR 1,272;
   - 5% interest *p.a.* as of 1 November 2010 over the amount of EUR 1,272;
   - 5% interest *p.a.* as of 1 December 2010 over the amount of EUR 1,272;
   - 5% interest *p.a.* as of 2 December 2010 over the amount of EUR 5,000;
   - 5% interest *p.a.* as of 1 January 2011 over the amount of EUR 1,272;
   - 5% interest *p.a.* as of 1 February 2011 over the amount of EUR 452.

3. The Respondent, Club S, has to pay to the Claimant, T, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 39,407 plus 5% interest *p.a.* on said amount as of the date of this decision until the date of effective payment.

4. If the aforementioned amounts plus interest (cf. points 2 and 3) are not paid, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. Any further claims lodged by the Claimant, T, are rejected.

6. The Claimant, T, is directed to inform the Respondent, Club S, 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:

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For the DRC judge

Jérôme Valcke
Secretary General

Encl. CAS directives