

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 27 February 2014,

in the following composition:

Geoff Thompson (England), Chairman
Todd Durbin (USA), member
Mohamed Al Saikhan (Saudi Arabia), member
Joaquim Evangelista (Portugal), member
Leonardo Grosso (Italy), member

on the claim presented by the club,

Club P, from country M

as Claimant/Counter-Respondent

against the player,

Player F, from country A

as Respondent/Counter-Claimant

and the club,

Club C, from country S

as intervening party

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 7 January 2011, Club V, from country, Club P, from country M, and the Player F, from country A born in May 1987, concluded a loan agreement (hereinafter: *the loan agreement*) for the transfer on a loan basis of the player from Club V to the club, valid until 30 June 2012 from the date of signature. The club undertook to pay to Club V the total amount of USD 260,000 as transfer compensation, payable as follows: (i) USD 90,000, on 8 January 2011, (ii) USD 85,000, on 1 July 2011 and (iii) USD 85,000, on 1 December 2011. Also the parties agreed in clause 6, that the club cannot transfer the player to another club, neither on a definitive nor on a temporary basis, without the express authorization of Club V. Clause 2 of the preamble of the loan agreement stipulated that: "*Club P is interested in acquiring the temporary leasing of the federative rights of the player in order to register him in the squad of his first professional team.*"
2. Furthermore, according to clause 5 of the loan agreement, the player states that "*he cannot claim to Club V any amount for any concept regarding the seasons 2.010/2.011, and 2.011/2.012, including any amount or percentage he would be entitled, including the established in art. 16 of the collective agreement LNFP-AFE, considering as settled and terminated, reason why he waives now and in the future to initiate any claim.*"
3. In accordance with the loan agreement, on 6 January 2011, the club and the player concluded an employment contract (hereinafter: *the contract*) valid for the season 2010/2011 ("*closing tournament 2011 only*") and 2011/2012 ("*opening tournament 2011 and closing tournament 2012*").
4. Pursuant to the contract, the player was entitled to an overall remuneration amounting to USD 228,000 for the season 2010/2011 and USD 456,000 for the season 2011/2012, to be paid fortnightly. The first salary should be paid on 15 January 2011 and the last one on 31 May 2012.
5. On 28 July 2011, the player signed two employment contracts with the Club E, from country A, valid until 30 June 2012, by means of which he would receive the total amount of currency of country A 345,000.
6. On 4 September 2011, the club lodged a claim before FIFA against the player for breach of contract without just cause and requested the payment of USD 618,000 as compensation, plus 5 % interest, composed of:
 - USD 456,000 corresponding to the remuneration for the season 2011/2012 established in the contract;
 - USD 162,000 corresponding to the amounts already paid by the club to Club V for the loan of the player in accordance with the loan agreement, considering that, on one hand, the club allegedly paid the first two instalments and, on the other hand, the player only played during seven months. The club further requested the imposition of sporting sanctions on the player for breach of contract without just cause during the protected period.

7. On 16 September 2011, the Single Judge of the Players' Status Committee authorized the provisional registration of the player with Club V.
8. In its claim, the club stated that the player failed to attend the training sessions on 26 July 2011 without any explanation and on the same date sent a letter terminating the employment contract alleging that the club has violated its contractual obligations by not registering him. Moreover, on 27 July 2011, apparently Club V requested the club to register the player within 48 hours to play with the first team.
9. On 2 August 2011, Club V sent a letter, terminating the loan agreement, alleging breach of contract because of the non-registration of the Player and outstanding payments. In this context, the club replied to the player and to Club V, on the same date, arguing *inter alia* that:
 - It had allegedly fulfilled all its contractual obligations towards the player and Club V;
 - There is no provision either in the employment contract or in the loan agreement obliging the club to register the player with the club, even more before the deadline set up by the country M Football Federation, which was allegedly 5 September 2011;
 - The player had no just cause to terminate the contract, since article 15 of the Regulations on the Status and Transfer of Players would not apply.
10. Also according to the club, the player replied to its letter ratifying his irrevocable intention to terminate the contract and Club V requested the return of the International Transfer Certificate (ITC) of the player, since the player had signed an employment contract with the Club E, from country A.
11. The club argues that the simple fact of not having been registered as one of the five foreign players in the beginning of the season 2011/2012 is not enough reason to terminate a contract based on sporting just cause.
12. The player rejected the club's claim and lodged a counterclaim. The player alleged having terminated his contract in writing with just cause, on 26 July 2011, and claimed the amount of USD 425,500 plus 5% interest since 26 July 2011 for such breach as follows:
 - USD 50,000 of the "unlawful" fine imposed by the club.
 - USD 45,600 for the unpaid salary of July 2011.
 - USD 410,400 for the remaining salaries until May 2012, after the deduction of the amount of USD 80,500 allegedly corresponding to the total remuneration to be received from the Club E, from country P.In addition the player requested sporting sanctions to be imposed on the club.
13. In this respect, according to the player, the club is trying to create confusion suggesting that the player breach the contract based in an unfounded sporting cause of the art. 15 of the Regulations on the Status and Transfer of Players. However the player clarified that the breach of contract was due to the fault of the club based on art. 17 of the Regulations on the Status and Transfer of Players

as a unilateral termination of the contract without just cause, since the club de-registered the player and separate him from the first team.

14. Moreover, the player point out that clause 2 of the preamble of the loan agreement binds the club to register the player in the squad of his first professional team.
15. According to the player, the club imposed him a fine amounting USD 50.000 and deducted it directly from his salary due to a red card received in a match. The player considers this fine unlawful and not valid. Also, after coming back from vacations, the player was allegedly separated from the first team and started training with the amateur players.
16. Furthermore, the player enclosed a letter from the club addressed to Club V, dated 13 July 2011, informing that the performance of the player was not as good as expected and that it had decided to look for a substitute player for the tournament and asking Club V to extend the deadline of the payments established in the loan agreement. The club further informed of the possibility to transfer the player to another club that would assume the relevant payments.
17. Regarding the termination, the player held having been hired specifically to play the *closing tournament 2011* and *opening tournament 2011* and *closing tournament 2012*. Also the player explained that the rules of the country M federation allow teams to register five foreign players to play for the club in the tournament and the club allegedly covered this quota by registering five foreign players other than the player and putting them in the line-up for the first match of the season. Therefore, the club breached the contract by excluding the player from the first team without registering him, regardless the deadline for registration.
18. The club rejected the player's counterclaim. The club pointed that the fact that they didn't register the player as one of the five foreign players to start the season cannot justify an unilateral termination of the employment contract taking into account the deadline for the registration, *i.e.* 5 September. Also the fact that the player had trained a couple of weeks with the second team did not justify the unilateral termination of the contract based on art.15 of the Regulations on Status and Transfer of Players. The club also challenged the fact that the second team is composed only by amateur players.
19. Furthermore, regarding the fine imposed to the player, the club held that it actually amounted to USD 45,600 and it is not unlawful, since it was based on the internal regulations of the club and on the bad behavior of the player who insulted a referee during a match. Also this fine, imposed in March 2011, cannot be used as grounds for the unilateral termination as well as the fact that the player has not complained before must be considered as acceptance of the fine.

20. On account of all of the above, the club requested the Dispute Resolution Chamber to dismiss the counterclaim made by the player. The club further amended its claim, requesting the amount of USD 631,000 plus 5% interest, made up of:
- USD 456,000 corresponding to the residual value of the terminated contract.
 - USD 90,000 corresponding to the 1st instalment of the transfer compensation paid in January 2011.
 - USD 85,000, corresponding to the 2st instalment of the transfer compensation paid in July 2011.
21. The player provided his comments to the amended claim and insisted on his arguments pointing, additionally, that in the report of the referee joined by the club, the name of the team in which the player was playing, was "Club P Sub-20", which demonstrates that the player wasn't included in the first team. Regarding the fine, the player considers that the amount is abusive and disproportioned, but did not constitute the reason for the termination of contract. From his point of view, the fine was abusive considering the following facts:
- The internal rules of the club weren't signed by the player.
 - The criteria's for the calculation weren't established in the internal rules and therefore, the amount is discretionally decided by the board of directors.
 - The fine was imposed directly to the player without the opportunity to be heard and submit his defense.
 - The amount of the fine is absolutely disproportionate since it exceeds the monthly salary of the player.
22. Although invited to provide its position to the claim lodged by the club, Club V failed to reply to the claim.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter: *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber took note that the present matter was submitted to FIFA on 4 September 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 3 of the 2008 and 2012 editions 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 2012), the DRC is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension, between a country M club and an country A player.

3. Furthermore, the DRC 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, the Chamber confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations (editions 2012 and 2010) and considering that the present matter was submitted to FIFA on 4 September 2011, the 2010 edition of said Regulations (hereinafter: *the 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 started by acknowledging the above-mentioned facts as well as the arguments and documentation submitted by the parties. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.
5. In doing so, the DRC acknowledged that the club and the player signed an employment contract on 6 January 2011 valid until the season 2011/2012 ("*opening tournament 2011*" and "*closing tournament 2012*"), in accordance with which the player was entitled to receive, an overall remuneration in the amount of USD 228,000 for the season 2010/2011 and USD 456,000 for the season 2011/2012.
6. In continuation, the Chamber also took note that it is uncontested by both parties that the contractual relationship was terminated by the player, by means of a termination notice dated 26 July 2011.
7. In this regard, the Chamber took due note that the club argued that the player had unilaterally terminated the contractual relationship without just cause, pointing out that it had fulfilled all its contractual obligations towards the player and Club V. The club also pointed out that there was no provision either in the contract or in the loan agreement obliging the club to register the player with the club. In addition, the club claims that the player had no just cause to terminate the contract, since article 15 of the Regulations would not be applicable. Also the fact that the player had trained couple of weeks with the second team did not justify the unilateral termination of the contract considering that these second team were not only composed by amateur players. Therefore, the club considered that the fact that the player not having been registered as one of the five foreign players in the beginning of the season 2011/2012 is not enough reason to terminate a contract based on sporting just cause also taking into account the deadline for the registration set up by the country M Federation, *i.e.* 5 September 2011. Finally the club refers to the fine imposed to player in accordance with the internal regulations of the club and on the bad behaviour of the player. In any

case, the club held that this fine also cannot be used as grounds for the unilateral termination.

8. The Chamber further took note of the argumentation of the player, who insists on the fact that the breach of the contract was due to the fault of the club based on art. 17 of the Regulations, since it deregistered the player and separated him from the first team. The player held having been hired to play the *"closing tournament 2011"* and *"opening tournament 2011 and closing tournament 2012"* and to be registered in the squad of his first team as established in clause 2 of the preamble of the loan agreement. In this regards, the player explained that the rules of the country M Federation allow teams to register five foreign players to play for the club in the tournament and that the club covered this quota by registering five foreign players other than him and putting them into the line-up for the first match of the season. Therefore, according to the above-mentioned, the player considers that the club breached the contract by excluding the player from the first team without registering him, regardless the deadline for the registration. Furthermore, the player enclosed a letter sent by the club to Club V informing that the performance of the player was not as good as expected and that it had decided to look for a substitute player for the tournament. Finally, regarding the fine imposed, the player considers that the amount is disproportionate and abusive, but it did not constitute the reason for the termination of the contract.
9. Considering the opposite position of the parties, the Chamber deemed that the underlying issue in this dispute, considering the claim and counterclaim respectively lodged by the parties, was to determine whether the employment contract had been unilaterally terminated with or without just cause by the player, and which party was responsible for the early termination of the contractual relationship in question. The DRC also underlined that, subsequently, if it were found that the employment contract was breached by one of the parties without just cause, it would be necessary to determine the consequences for the party that caused the unjust breach of the relevant employment contract.
10. In view of the above, the Chamber subsequently went on to deliberate as to whether the player was deregistered by the club, and if it can be considered as a just cause for the player to have prematurely terminated the employment relationship.
11. In this context, the Chamber considered that it remained uncontested by the club that the player was deregistered before the season 2011/2012 and that the club, at the first match of the season, made use of the quota of foreign players in accordance to the applicable regulations. Moreover, the DRC took note that the club had addressed a letter to Club V, on 13 July 2011, explaining that the player had not performed as expected and that it had decided to look for a substitute, even enquiring the possibility of transferring the player on a loan basis. On the other hand, the Chamber took note of the argument of the club that the

player could have still been registered until September 2011 and therefore, he had no just cause to terminate the contract.

12. In view of all the above, the DRC considered that at the time of the termination of the contract, *i.e.* on 26 July 2011, despite the arguments of the club that the deregistration was not definitive and that the player could still be registered until September 2011, the player had good reasons to believe that his registration would not occur. In particular, considering that the club had already informed Club V regarding its wish to transfer the player. Consequently, and considering the situation of the player at the time of the termination, the Chamber was of the opinion that the objective circumstances at the time did provide the player with just cause to prematurely terminate the employment contract.
13. At this point, the members of the DRC first of all considered important to point out, as has been previously sustained by the DRC, that among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches. In this context, the DRC emphasized that by refusing to register a player, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his fundamental rights as a football player.
14. Therefore, the members of the DRC concluded that the Respondent effectively prevented the Claimant from being eligible to play for it during the season 2011/2012, and thus, that the player terminated the contract at the beginning of the said season.
15. Therefore, the members of the DRC highlighted that, at the moment the player terminated the contract, he was deregistered by the club and had strong reasons to believe the club was no longer interested in him. As mentioned previously, the sole fact of not registering the player, thus preventing him from rendering his services to the club, constitutes in itself a serious breach of contract.
16. In light of the aforementioned, the DRC came to the unanimous conclusion that the player had terminated the contract with just cause.
17. Having established that the club is to be held liable for the early termination of the employment contract, the Chamber focused its attention on the consequences of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the player is entitled to receive from the club an amount of money as compensation for breach of contract in addition to any outstanding payments on the basis of the relevant employment contract.

18. First of all, the Chamber reverted to the player's counterclaim, which includes the outstanding amount of USD 45,600 relating to the salary of July 2011 and USD 50,000 of the unlawful fine imposed by the club.
19. At this stage, the Chamber considered relevant to recall that the club does not dispute the outstanding amount relating to the salary of July 2011, nevertheless it was stipulated that the salary was paid fortnightly and therefore, as the termination of the contract occurred on 26 July 2011, only the half of the salary of July 2011 amounting to USD 22,800 can be considered as outstanding on the date of termination.
20. Regarding the fine imposed, the DRC took note that the club maintains that the correct amount is USD 45,600 which wasn't contested by the player. The club states that this fine is not unlawful based on the internal regulations of the club and on the bad behaviour of the player who was banned for four games. In this respect, the DRC considered that the club provided with evidence of the offence committed as well as of the imposition of the fine on the player. On the other hand, the player did not dispute the offence committed. As a consequence, the members of the Chamber determined that according to the time of suspension, *i.e.* one month and considering the internal regulations, the fine does not appear to be disproportionate and was not contested by the player at the time of its imposition. As a consequence, the Chamber concluded that this amount cannot be granted to the player.
21. Consequently, taking into account that the employment contract was terminated on 26 July 2011 and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the club is liable to pay the player the amount of USD 22,800 as outstanding remuneration corresponding to half of the salary for July 2011 plus 5 % interest since the date of the termination on 26 July 2011.
22. In continuation, the Chamber focused 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 player 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.
23. In application of the relevant provision, the Chamber held that it 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. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

24. 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 said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
25. Bearing in mind the foregoing as well as the counterclaim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract until May 2012, taking into account that the player's remuneration up until mid-July 2011 is included in the calculation of the outstanding remuneration (cf. point II.21 above). Consequently the Chamber concluded that the amount of USD 433,200 (*i.e.* salaries as from 15 July 2011 until May 2012) serves as the basis for the determination of the amount of compensation for breach of contract.
26. In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been able to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
27. In this context, the Chamber noted that the player had signed on 28 July 2011, two employment contracts with Club E, both valid until 30 June 2012, by means of which he would receive the total amount of currency of country A 345,000, equivalent to USD 80,500.
28. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of USD 352,700 to the player which was considered reasonable and proportionate as compensation for breach of contract in the case at hand.
29. In addition, taking into account the player's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided that the club must pay to the player interest of 5% *p.a.* on the amount of compensation, *i.e.* USD 352,700 as of the date of the counterclaim, *i.e.* 21 November 2011 until the date of effective payment.

30. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further request filed by the player is rejected. Equally and considering that the club was, overall, found to be in breach of contract, the claim of the club is rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant / Counter-Respondent, Club P, is rejected.
2. The counterclaim of the Respondent / Counter-Claimant, Player F, is partially accepted.
3. The Claimant / Counter-Respondent, Club P, is ordered to pay to the Respondent / Counter-Claimant, Player F, **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of USD 22,800, plus 5% interest p.a. on the said amount since 26 July 2011 until the date of effective payment
4. The Claimant/Counter-Respondent, Club P, has to pay to the Respondent / Counter-Claimant, Player F, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of USD 352,700 plus 5% interest p.a. as of 21 November 2011 until the date of effective payment.
5. If the aforementioned sums plus interest are not paid within the above-mentioned time limits the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.
6. Any further request filed by the Respondent / Counter-Claimant, Player F, is rejected.
7. The Respondent / Counter-Claimant, Player F, is directed to inform the Claimant / Counter-Respondent, Club P, immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.

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:

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:

Markus Kattner
Deputy Secretary General

Encl. CAS directives