

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 28 January 2016,

in the following composition:

Geoff Thompson (England), Chairman
Theodoros Giannikos (Greece), member
Theo van Seggelen (the Netherlands), member

on the claim presented by the player,

Player A, country B,

as Claimant

against the club,

Club C, country D

as Respondent

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 9 July 2012, the player from country B, Player A (hereinafter: *the Player* or *the Claimant*), and the club from country D, Club C (hereinafter: *the club* or *the Respondent*), signed an employment contract (hereinafter: *the contract*) valid as from 1 July 2012 until 31 May 2014.
2. According to the "*Schedule*" annexed to the contract, the club *inter alia* undertook to pay the player a total remuneration of "*USD 2,954,000*", as follows:
 - USD 1,476,598 for the first sporting season, payable via an advance payment of USD 295,000 followed by a payment of USD 1,181,598 divided in eleven equal monthly payments of USD 107,418 each, as from 1 July 2012 up and until 31 May 2013;
 - USD 1,476,592 for the second sporting season, payable via a down payment of USD 295,000 followed by a payment of USD 1,181,592 divided in twelve equal monthly payments of USD 98,466 each, as from 1 June 2013 until 31 May 2014.
3. According to art. 4 lit. 3 of the contract, "*In the event of any dispute the remuneration set out in the Schedule shall be conclusively deemed to be the full entitlement of the Player.*"
4. According to art. 1 of the contract, and *inter alia*, the Statutes and Regulations of the Football Association of country D (hereinafter: *Football Association of country D*) are an integral part of the contract and the player is deemed to have acknowledged that said rules are binding on him, insofar said rules are consistent with legal provisions and public order.
5. According to art. 13 of the contract, the law of the State of country D primarily applies and, subsequently, the Football Association of country D, the Football Confederation of country D and the FIFA Regulations are applicable in case of a contractual dispute.
6. In continuation, art. 10 of the contract, entitled "*Termination by the Club or the Player*", provides for the following terms:
 - Par. 1: "*[The club] and the Player may terminate this Contract before its expiring term, by mutual agreement.*"
 - Par. 2: "*[The club] and the Player shall be entitled to terminate this Contract, before its expiring term, by fifteen (15) days' notice in writing for just cause*

according with the FIFA Regulations governing this matter as well as the Law of the State of country D."

- *Par. 3: "When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, [the club] or the player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount of:*
 - *To [the club]: Total amount of the Contract;*
 - *To the player: Remaining salaries of the same season."*

7. On 6 May 2013, the club terminated the contract by means of a termination notice, which *inter alia* reads "[the club] has decided to terminate the Professional Football Player Contract has signed between the club and [the player], which has signed on 09/07/2012, this termination effective from 07th may 2013."
8. On 4 September 2013, the player lodged a claim before FIFA for breach of contract against the club and claimed the following :
 - the amount of USD 1,477,402, *i.e.* USD 2,954,000 minus USD 1,476,598 the player acknowledges having received, plus interest on said amount calculated as from 7 May 2013;
 - sporting sanctions against the club;
 - any additional, further or other remedy the Dispute Resolution Chamber (hereinafter also referred to as *the DRC or the Chamber*) deems appropriate.
9. In his statement of claim, the player explained that whereas he always complied with his obligations, the club decided to put an end to the contract by means of the aforementioned termination notice.
10. According to the player, said termination letter did not mention any reason for the termination. Also, the player stressed that the club never informed him that it was not satisfied with his personal conduct or his sportive performance, be it during the execution of the contract or after the termination.
11. In continuation, the player stressed that at the time of the termination, the club had repeatedly been late in paying his monthly salaries and that the club's last payment was dating back to 6 February 2013, when the club paid him his remuneration for the month of December 2012.
12. In particular, the player held that his remuneration for the months of November 2012 to May 2013 was received late, this is, the salary of November 2012 was received on 10 January 2013 and the salary of December 2012 on 6 February 2013. Furthermore, his salaries of January and February 2013 were paid on 26 May 2013

and his salaries for March, April and May 2013 on 24 July 2013, *i.e.* after the termination of the contract.

13. Furthermore, the player reported that on 1 July 2013, and while he was still unemployed, he asked the club to pay the amount of UDS 1,598,846 as compensation, an amount that *inter alia* included an estimation of hypothetical future earnings as mitigation of his damage.
14. However, the player highlighted that even if he would manage to mitigate his financial loss by signing an employment contract with another club, the DRC should not take into account any new earnings, since, based on the terms of art. 4 lit. 3 of the contract, he is entitled to receive the residual value of the contract as compensation.
15. In its reply to the claim, the club challenged the player's representation of the facts as well his argumentation, as it deemed that said presentation is partial and incomplete.
16. According to the club, the player's recruitment was an important investment as it paid a transfer fee of USD 500,000 in order to acquire his services and offered him contractual terms that significantly exceeded his market value.
17. As to the delays in payments, the club held that said delays only consisted of a few days and that the absence of complaints from the player in this respect equals an acceptance from his side of the situation. According to the club, the player never lost confidence in the fact that the club would indeed pay him his receivables. In this respect, with regard to the salaries as from November 2012, the club held that it paid the salary of November 2012 on 7 January 2013, the salary of December on 5 February 2013, the salaries of January and February 2013 on 23 May 2013 and the salaries for March, April and May 2013 on 21 July 2013.
18. As to the termination of the contract, the club also rejected the player's argumentation and claimed that it was entitled to terminate the contract on the basis of art. 10 par. 3 of the contract.
19. In this respect, the club explained that in accordance with the legal principle *pacta sunt servanda*, it was allowed to terminate the contract the way it proceeded with, as this termination process had been negotiated and freely agreed upon by both parties. In this regard, the club stressed that the player had been the strong party in the negotiations leading up to the conclusion of the contract; he was thus able to negotiate or impose his wishes.

20. Hence, according to the club, the player's acceptance of the amount(s) stipulated in said clause, and which the club paid in full, represents a waiver from his side to claim any other amounts.
21. Additionally, and according to the club, the termination process at hand can also be seen, *mutatis mutandis*, as the execution of a contractual buy-out clause, which is to be considered as valid.
22. In continuation, the club stressed that the termination clause at hand is also valid under the Football Association of country D rules, which, in line with art. 1 and art. 13 of the contract, are an integral part of the contract. Also, the club submitted a copy of an extract of the "Football Association of country D Competitions Regulations For Sport Season 2012/2013" which read, in art. 5/B: "*An employment contract may not be terminated except upon expiry of the term of the contract or by mutual agreement or by payment of compensation, if it is stated explicitly in the contract*".
23. Finally, the club argued that the termination of the contract at hand is also valid under the FIFA regulations as, in its jurisprudence, the DRC allegedly accepted such clauses to be valid provided they had been negotiated and set forth fair terms, which is applicable to the case at hand. In particular, the club referred to a DRC decision that *inter alia* reads "*Under particular circumstances, the Chamber can admit arrangements whereby the parties have foreseen and agreed upon the terms of an early termination of a contract in the employment contract itself. In order to accept such an arrangement, the Chamber must feel that the parties have been able to negotiate these terms in a manner that is not the result of a unilateral command by only one of the parties. Essentially, the rescission clause contained in the employment contract must provide for terms that can be considered acceptable to both the employer as well as the employed*" [Emphasis added by the club].
24. In conclusion, the club insisted that as it did not breach the contract, the player is not entitled to any other amount but the sum he already received and no sporting sanctions can be imposed upon the club.
25. Finally, the club sustained that in the unlikely event that the player's claim was accepted, a mitigation of the compensation should be applied.
26. After closure of the investigation phase of the matter at hand, on 24 December 2014, the player submitted an unsolicited reaction to the club's reply, on which reaction the club has given its position.

27. On 1 October 2013, the player signed an employment contract with the club from country B, Club E, valid as from its signature date until 31 May 2014, and on the basis of which he was entitled to receive 100,686.50.

II. Considerations of the Dispute Resolution Chamber

1. First, the Dispute Resolution Chamber analysed whether it was competent to deal with the matter at hand. In this respect, it took note that the present matter was submitted to FIFA on 4 September 2013. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2012; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 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 and par. 2 in combination with art. 22 b) of the Regulations on the Status and Transfer of Players (edition 2015; hereinafter: *the Regulations*), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an player from country B and a club from country D.
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 par. 2 of the Regulations (edition 2015), and considering that the present claim was lodged on 4 September 2013, the 2012 edition of said regulations is applicable to the matter at hand as to the substance.
4. The competence of the DRC and the applicable regulations having been established, the Chamber entered into the substance of the matter. In doing so, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the 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. Additionally, the DRC observed that the Claimant submitted unsolicited comments in response to the Respondent's answer to the claim after the investigation-phase of the matter had already been closed. As a result, the DRC decided not to take into account the Claimant's unsolicited comments, nor the subsequent Respondent's final statement, and established that in accordance with art. 9 par. 3 of the Procedural Rules, it shall take a decision upon the basis of those documents on file that were provided prior to the closure of the investigation-phase, *in casu*, upon the

statements and documents presented by the Claimant and the Respondent in their statement of claim and answer in relation thereto, respectively.

6. In this context, the members of the DRC first acknowledged that it was undisputed by the parties that, on 9 July 2012, they signed an employment contract valid until 31 May 2014, as per which the Claimant was entitled to receive the remuneration detailed in the Schedule and presented in point I./2. above. Furthermore, the Chamber noted that it was also undisputed by the parties that, on 6 May 2013, the Respondent terminated the parties' contractual relationship with effect as of 7 May 2013.
7. Subsequently, the Chamber took note of the argumentation put forward by the Claimant, according to whom, after having failed to pay him several monthly salaries in a timely manner, the Respondent terminated the contract without just cause or prior warning. Consequently, the Claimant *inter alia* claims from the Respondent the payment of compensation for unlawful termination of contract in the amount of USD 1,477,402.
8. The Chamber further noted that the Respondent, whilst acknowledging delays in the payment of various monthly salaries to the Claimant, deems that its termination of the contract is lawful as it is in line with the contractual terms both parties freely agreed upon as well as with the regulations applicable to the contract. Furthermore, the Respondent underlined that in accordance with art. 10 par. 3 of the contract, the Claimant already received compensation in connection with said termination, in the residual amount of the remuneration the Claimant was entitled to receive until the end of the season in which the termination occurred.
9. Having established the aforementioned, the Chamber deemed that the underlying issue in the present dispute, considering the claim of the Claimant and the position of the Respondent, was to determine whether or not the Respondent terminated the employment contract with just cause.
10. In this context, and prior to entering into the parties' respective arguments, the Chamber first deemed relevant to examine the Respondent's termination notice dated 6 May 2013 and, after a careful analysis of its contents, took into account that said notice neither set forth any specific cause for the Respondent's decision to terminate the contract nor does it refer to any particular article of the contract to justify the termination.
11. Having so found, the Chamber turned its attention to the Respondent's argument that it was entitled to terminate the contract on the basis of art. 10 par. 3 of the contract.

12. Irrespective of the fact that the Respondent had not invoked art. 10 par. 3 in its notice of termination, however it does so in its reply to the Claimant's claim, the members of the Chamber wished to point out that said provision does not grant the parties a contractual right to terminate the contract without any justification, but solely foresees the financial obligations to be borne by the party at the origin of a termination of contract that "*is not due to a just cause*".
13. Having said that, the Chamber reverted to the Respondent's argument that *mutatis mutandis*, art. 10 par. 3 of the contract can be seen as a "*buy-out*" clause.
14. In this regard, the DRC disagreed with the Respondent's viewpoint and stressed that whereas a "*buy-out*" clause, as referred to by the Respondent, would correspond to situations in which a payment of a predetermined amount of money is effected by a third party club or by the player himself in order to untie the contractual bound existing between a player and his employing club, such instrument cannot be relevantly paralleled to a situation in which a (variable) amount of money is paid by the player or the player's club itself to the counterparty after the termination of a contract on the basis of a clause explicitly related to payments due "*when the termination of the contract is not due to a just cause or a mutual agreement*", as stipulated in said art. 10 par. 3 of the contract.
15. Having so found, the Chamber turned its attention to the Respondent's argument that the contractual termination clause is valid under the Football Association of country D rules, which allegedly apply to the contractual relationship at hand based on art. 1 and 13 of the contract (cf. point I./22. above).
16. In this respect, the Chamber wished to point out that art. 13 of the contract, apart from the Football Association of country D rules, equally refers to the FIFA Regulations on the Status and Transfer of Players. Consequently, the DRC held that the parties have certainly not agreed on the exclusive application of the Football Association of country D regulations, but clearly established that their contractual relationship shall also be governed by the FIFA regulations.
17. In continuation, the DRC wished to point out that when deciding a dispute before the DRC, FIFA's regulations prevail over any national law chosen by the parties. In this regard, the Chamber emphasized that the main objective of the FIFA regulations is to create a standard set of rules to which all the actors within the football community are subject to and can rely on. This objective would not be achievable if the DRC would have to apply the national law of a specific party on every dispute brought to it. This should apply, in particular, also to the termination of a contract. In this respect, the DRC wished to point out that it is in the interest of football that the termination of a contract is based on uniform criteria rather than

on provisions of national law that may vary considerably from country to country. Therefore, the Chamber deems that it is not appropriate to apply the principles of a particular national law to the termination of the contract but rather the Regulations on the Status and Transfer of Players, general principles of law and, where existing, the Chamber's well-established jurisprudence.

18. As a result of the above considerations, the Chamber decided to reject the Respondent's argument that art. 10 par. 3 of the contract permitted it to lawfully terminate the contract signed with the Claimant without having a cause..
19. Furthermore, the Chamber continued its analysis of the Respondent's termination of contract by stressing that it is undisputed that the Respondent never warned or put the Claimant in default prior to proceeding with the unilateral termination of the contract.
20. Finally, the Chamber wished to emphasise that whereas it has remained undisputed that the Claimant has fully respected his obligations towards the Respondent, the latter admitted having been repeatedly late in the payment of the Claimant's remuneration, and therefore repetitively acted in breach of its own contractual obligations (cf. point I./12. and I./17. above). In this context, it can be noted that at the time of the termination of the contract by the Respondent on 6 May 2013, the Claimant's remuneration as from January 2013 had been outstanding, remuneration which was remitted by the Respondent to the Claimant after the Respondent had terminated the contract.
21. On account of the all of the aforementioned facts and considerations, the DRC decided that the Respondent terminated the contract with effect on 7 May 2013 without just cause.
22. Having established the above, the Chamber went on to deal with the consequences of the early termination of the employment contract without just cause by the Respondent.
23. First of all, the members of the Chamber established that in light of the payments made by the Respondent to the Claimant subsequent to the termination of the contract, which include all instalments up to and including May 2013, no remuneration in connection with the 2012-13 season in fact remains outstanding at present.
24. In continuation, the Chamber decided that, on the basis of art. 17 par. 1 of the Regulations, the Claimant is entitled to receive compensation for breach of contract without just cause from the Respondent.

25. Subsequently, 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 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.
26. 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.
27. In this regard, the Chamber recalled that art. 10 par. 3 of the contract establishes that *“When the termination of the Contract is not due to a just cause or a mutual agreement between the parties concerned, [the club] or the player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount of: - To [the club]: the total amount of the contract; - To the player: (...) remaining salaries of the same season”*.
28. In this context, the Chamber considered that this clause establishes different and unbalanced financial consequences of a breach of contract without just cause for the Claimant and the Respondent, *i.e.* it is not reciprocal as it does not grant similar rights to the player. The DRC, therefore, decided that art. 10 par. 3 of the contract cannot be taken into consideration in the determination of the amount of compensation.
29. Consequently, the Chamber established that it had to assess the compensation due to the Claimant in accordance with 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. Therefore, other objective criteria may be taken into account at the discretion of the deciding body. In this regard, the Dispute Resolution Chamber emphasised beforehand that each request for compensation for contractual breach has to be assessed by the Chamber on a case-by-case basis taking into account all specific circumstances of the respective matter.
30. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the remuneration payable to the Claimant under the terms of the employment contract as from the date of termination, *i.e.* 7 May 2013, until 31 May 2014. The Chamber

concluded that, as the player's remuneration for the month of May 2013 was already paid in full by the Respondent, it ensues that the amount of USD 1,476,592, corresponding to the global amount due for the 2013/2014 season, serves as the basis for the final determination of the amount of compensation for breach of contract.

31. In continuation, the Chamber verified as to whether the Claimant 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 Dispute Resolution Chamber, 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.
32. In this context, the Chamber noted that, on 1 October 2013, the Claimant signed a new employment contract with the club from country B Club E, valid as from its signature date until 31 May 2014, according to which he was entitled to a global salary in amounting to USD 95,000.
33. 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 the amount of USD 1,381,592 as compensation for breach of contract to the Claimant.
34. In addition, taking into account Claimant's request as well as the Chamber's respective jurisprudence, the Chamber decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the amount of compensation as of 4 September 2013 until the date of effective payment.
35. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim filed by the Claimant is rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player A, is partially accepted.
2. The Respondent, Club C, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of USD 1,381,592, plus 5% interest *p.a.* as from 4 September 2013 until the date of effective payment.

3. In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.
4. Any further claim lodged 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.

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 Dispute Resolution Chamber:

Markus Kattner
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Encl. CAS directives