

Decision of the Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 6 June 2018,

by **Jon Newman (USA)**, DRC judge

on the matter between the player,

Player A, Country B

as Claimant

and the club,

Club C, Country D

as Respondent

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 10 January 2017, the player of Country B, Player A (hereinafter: *the Claimant*), and the club of Country D, Club C, (hereinafter: *the Respondent*), signed an employment contract (hereinafter: *the contract*), valid as from 12 January 2017 until 30 June 2017.
2. In accordance with clause 5 of the contract, the Claimant was entitled to receive a total amount of USD 90,000 payable as follows:
 - USD 30,000 to be paid *"after passing the medical checks and issuing the player card from Football Association of Country D"*;
 - USD 60,000 payable in 4 installments of USD 15,000 each to be paid *"at the end of each month from the end of February 2017 to the end of May 2017"*.
3. Furthermore, clause 9 of the contract stipulates: *"The [Respondent] shall provide treatment to the [Claimant] and his family at the government hospitals inside the Country D only in case of the [Claimant] participation in the games outside of Country D the [Respondent] will provide the emergency treatment then will continue in Country D"*.
4. By correspondence dated 6 July 2017, the Claimant put the Respondent in default of payment for a total amount of USD 62,000, setting a 10 days' time limit in order to remedy the default.
5. On 3 October 2017, the Claimant lodged a claim in front of FIFA and requested a total amount of USD 62,000, broken down as follows:
 - USD 45,000 as outstanding salaries;
 - USD 17,000 for medical expenses.
6. In addition, the Claimant claimed the procedural cost and *"case fees"*.
7. In his claim, the Claimant argued that the Respondent had failed to pay his remuneration in the total amount of USD 45,000.
8. Furthermore, the Claimant explained that during a match of the League Championship of Country D played on 12 March 2017, he *"was subjected to a strong blow of the knee (cut in the cruciate ligament)"*.
9. Within this context, the Claimant explained that the Respondent transferred him to the *"Hospital E"* in Country F and also *"pledged to pay for the treatment"*.

10. According to the Claimant, the Respondent paid “*part of the cost of treatment*” amounting to USD 15,821. However, the Claimant stated that the Respondent failed to pay USD 17,000 as “*the rest of the cost of treatment*”, which according to the Claimant correspond to “*cost of treatment, accommodation, travel and transportation to attend physiotherapy sessions in the hospital*”.
11. Despite being invited to do so, the Respondent did not reply to the player’s claim.

II. Considerations of the DRC judge

1. First of all, the Dispute Resolution Chamber (DRC) judge (hereinafter: *the DRC judge*) analysed whether he was competent to deal with the matter at hand. In this respect, he took note that the present matter was submitted to FIFA on 3 October 2017. Consequently, the 2017 edition of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 of the 2017 and 2018 editions of the Procedural Rules).
2. Subsequently, the DRC judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in conjunction with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2018) he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player of Country B and a club of Country D.
3. Furthermore, the DRC judge analyzed which 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 par. 2 of the Regulations on the Status and Transfer of Players (editions 2016 and 2018) and considering that the present claim was lodged on 3 October 2017, the 2016 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. In this respect, the DRC judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the DRC judge emphasized that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.
5. Having said that, the DRC judge acknowledged that on 10 January 2017 the Claimant and the Respondent signed an employment contract valid as from 12 January 2017

until 30 June 2017 in accordance with which the Claimant was entitled to receive from the Respondent a total amount of USD 90,000 payable as follows:

- USD 30,000 to be paid *"after passing the medical checks and issuing the player card from Football Association of Country D"*;
- USD 60,000 payable in 4 installments of USD 15,000 each to be paid *"at the end of each month from the end of February 2017 to the end of May 2017"*.

6. Along with the above, the DRC judge observed that clause 9 of the contract stipulates that *"the [Respondent] shall provide treatment to the [Claimant] and his family at the government hospitals inside the Country D only in case of the [Claimant] participation in the games outside of Country D the [Respondent] will provide the emergency treatment then will continue in Country D"*.
7. In this context, the DRC judge took particular note of the fact that, on 6 July 2017, the Claimant put the Respondent in default of payment of a total amount of USD 62,000, setting a 10 days' time limit in order to remedy the default.
8. The DRC judge noted that, on 3 October 2017, the Claimant lodged a claim in front of FIFA and requested a total amount of USD 62,000 broken down as follows:
 - USD 45,000 as outstanding salaries;
 - USD 17,000 for medical expenses.
9. In this regard, the DRC judge took note that the Claimant argued that the Respondent had failed to pay his remuneration in the total amount of USD 45,000.
10. Moreover, the DRC judge observed that the Claimant stated that the Respondent paid *"part of the cost of treatment"* amounting to USD 15,821 but that the Respondent did not pay *"the rest of the cost of treatment"*, i.e. USD 17,000.
11. Subsequently, the DRC judge took into account that the Respondent, for its part, failed to present its response to the claim of the Claimant, in spite of having been invited to do so. In this way, the DRC judge considered that the Respondent renounced its right to defence.
12. Furthermore, as a consequence of the aforementioned consideration, the DRC judge concurred that in accordance with art. 9 par. 3 of the Procedural Rules he shall take a decision upon the basis of the documents already on file, in other words, upon the statements and documents presented by the Claimant.
13. Taking into account the documentation presented by the Claimant in support of his petition as well as the lack of response from the Respondent, the DRC judge concluded that the Claimant had substantiated his claim pertaining to outstanding salaries (USD 45,000) with sufficient documentary evidence.

14. Notwithstanding with the above, and bearing in mind art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, the DRC judge deemed that the Claimant had not presented relevant evidence, such as invoices and/or bank receipts, which would demonstrate that the claimed amount for medical expenses (USD 17,000) was paid by the Claimant or that it was due. Consequently, the DRC judge decided to reject the Claimant's claim pertaining to the medical expenses.
15. On account of the aforementioned considerations, the DRC judge established that the Respondent failed to remit the Claimant's remuneration in the total amount of USD 45,000.
16. Consequently, the DRC judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant outstanding remuneration in the total amount of USD 45,000.
17. Furthermore, as regards the claimed legal expenses and procedural costs, the DRC judge referred to art. 18 par. 4 of the Procedural Rules as well as to the long-standing and well-established jurisprudence of the DRC, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber. Consequently, the DRC judge decided to reject the Claimant's request relating to legal expenses and procedural costs.
18. The DRC judge concluded his deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

III. Decision of the DRC judge

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, outstanding remuneration in the amount of USD 45,000.
3. In the event that the aforementioned sum is not paid by the Respondent within the stated time limit, interest at the rate of 5% *p.a.* will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to FIFA's 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 DRC judge of every payment received.

Note relating to the motivated decision (legal remedy):

According to art. 58 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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Encl. CAS directives