Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 7 June 2018,

in the following composition:

Geoff Thompson (England), Chairman
Roy Vermeer (the Netherlands), member
Jon Newman (USA), member
Wouter Lambrecht (Belgium), member
Pavel Pivovarov (Russia), 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 31 August 2016, the Player of Country B, Player A (hereinafter: *Claimant*), and the Club of Country D, Club C (hereinafter: *Respondent*), signed an employment contract valid as from the date of signature until 31 May 2019.

2. According to art. 3 of the employment contract, the Claimant was entitled to receive from the Respondent, *inter alia*:

   a. a total amount of EUR 165,000 for the season 2016/2017, consisting of EUR 65,000 as *"advance payment"* payable on the date of signature of the contract and EUR 100,000 in ten monthly salaries of EUR 10,000 each, payable the 30th day of each month as from September 2016 until June 2017, with December 2016 being payable on 1 January 2017 and February 2017 on 28 February 2017;

   b. a total amount of EUR 160,000 for the season 2017/2018;

   c. a total amount of EUR 170,000 for the season 2018/2019;

   d. *"Minimum wage"* as net monthly wage.

3. According to the same provision, the Respondent undertook, amongst other obligations, to *"pay the rent of the apartment of the* [Claimant]*"*.

4. According to clause 2) of the 'Special Provisions' of the employment contract, *"If the* [Respondent] *pay and of the amounts referred in Employment contract for more than 90 days. (i.e salaries, benefits, bonuses and any other monetary obligation) This contract may be terminated by the* [Claimant] *for just cause. But firstly the* [Claimant] *has to sent a written notification to the* [Respondent] *and the* [Respondent] *doesn't pay the due amount within 30 days after receiving this Nonification".*

5. By letter dated 1 December 2016, the Claimant put the Respondent in default of payment of EUR 30,000, consisting of the monthly salaries of September, October and November 2016, asking to be paid within 10 days. With the same correspondence, the Claimant informed the Respondent that it had not paid the house rent in accordance with the contract and precautionary indicated that clause 2) of its 'Special Provisions' should be deemed invalid.

6. In reply to said correspondence, the Respondent acknowledged the existence of a debt towards the Claimant but requested to be given a 30 days' notice in order to comply with its contractual obligations.

7. By a further letter addressed to the Respondent on 21 February 2017, the Claimant reiterated his request to be paid EUR 30,000, this time referring to the monthly salaries of November 2016, December 2016 and January 2017 asking to be paid within 10 days. With the same correspondence, the

Claimant reiterated his position regarding the validity of clause 2) of the 'Special Provisions' of the employment contract and informed the Respondent that it had not paid the house rent accordingly.

8. By a subsequent letter dated 12 May 2017, the Claimant put the Respondent in default of the payment of EUR 50,000, consisting of the monthly salaries of December 2016, January, February, March and April 2017, asking to be paid within 7 days. With said correspondence, the Claimant reiterated once again his position regarding clause 2) of the 'Special Provisions' of the employment contract and the allegedly unpaid house rent.

9. By letter dated 24 May 2017, the Claimant unilaterally terminated the contract, claiming that the Respondent *"did not fulfil its contractual obligations for about 5-6 months"*.

10. On 30 June 2017, the Claimant lodged a claim against the Respondent in front of FIFA maintaining that he had just cause to terminate the contract and requesting to be awarded the total amount of EUR 750,000 and 13,343, consisting of:

    a. EUR 50,000, corresponding to outstanding salaries as from December 2016 until April 2017, plus 5% interest *p.a.* as of, respectively, 1 January 2017, 30 January 2017, 28 February 2017, 30 March 2017 and 30 April 2017;

    b. 13,343 as *"minimum wage"* as from September 2016 until 24 May 2017, plus 5% interest *p.a.* as of 24 May 2017;

    c. EUR 350,000 as compensation for breach of contract, corresponding to its residual value (EUR 20,000 for the season 2016/2017, EUR 160,000 for the season 2017/2018 and EUR 170,000 for the season 2018/2019), plus 5% interest *p.a.* as of the date of the claim;

    d. EUR 350,000 *"with its interests"* as *"additional compensation"*, corresponding to the player's estimated *"sporting and financial damages"*.

11. With his claim, the Claimant further asked the reimbursement of the legal costs.

12. More in particular, the Claimant argued that, since the beginning of the employment relationship, the Respondent had never fully complied with its obligations related to the payment of salaries and fringe benefits, notwithstanding the various default notices he sent. Therefore, the Claimant held that he had just cause to terminate the contract on 24 May 2017, since, by then, 5 monthly salaries were outstanding.

13. Furthermore, the Claimant maintained that, pursuant to the employment contract, he was also entitled to the minimum wage in accordance with Legislation of Country D, which he quantified in the total amount of 13,343.

14. Moreover, the Claimant explained that, as a consequence of the Respondent's stance, he suffered additional financial and moral damages, for which he deemed he had to be compensated.

15. Despite having been invited by FIFA to provide its comments on the present matter, the Respondent did not answer to the claim.

16. The Claimant informed FIFA that, on 10 August 2017, he signed an employment contract with the Club of Country B, Club E, valid as from 11 August 2017 until 30 June 2018, which entitled him to a monthly salary of 13,500, plus 15,750 payable on 1 November 2017 and 15,750 payable on 1 April 2018.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred as *DRC* or *Chamber*) 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 30 June 2017. Consequently, the DRC concluded that the 2017 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. 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 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2018), the Dispute Resolution Chamber 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 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 2 of the Regulations on the Status and Transfer of Players (edition 2018), and considering that the present claim was lodged on 30 June 2017, the 2016 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 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. Having said that, the members of the Chamber acknowledged that, on 31 August 2016, the Claimant and the Respondent concluded an employment contract valid as from the date of signature until 31 May 2019, pursuant to which the Claimant was entitled to a total amount of EUR 165,000 for the season 2016/2017, a total amount of EUR 160,000 for the season 2017/2018 and a total amount of EUR 170,000 for the season 2018/2019. The members of the Chamber noted, in particular, that it had been agreed upon between the parties that, for the season 2016/2017, the Claimant was entitled to be paid as follows: a) EUR 65,000 as *"advance payment"* payable on the date of signature of the contract and b) EUR 100,000 in ten monthly salaries of EUR 10,000 each, payable the 30th day of each month as from September 2016 until June 2017 with December 2016 and February 2107 having 1 January 2017 and 28 February 2017, respectively, as due dates.

6. The DRC subsequently acknowledged that, according to the Claimant, he had just cause to unilaterally terminate the employment contract on 24 May 2017, due to the fact that, by then, the Respondent had failed to remit him 5 monthly salaries. The members of the Chamber equally took into account that the Claimant had put the Respondent in default of payment of his outstanding salaries on 3 occasions prior to terminating the contract, each time partially referring to different monthly entitlements, as the Respondent apparently had made partial payments to the Claimant in the meantime. Moreover, the DRC took note that in the last notice of default, dated 12 May 2017, the Claimant put the Respondent in default of payment of EUR 50,000, consisting of the monthly salaries of December 2016, January, February, March and April 2017.

7. Furthermore, the Chamber took note that the Respondent, for its part, failed to present its response to the claim of the Claimant, despite having been invited to do so. In this way, the Chamber deemed, the Respondent renounced its right to defence and accepted the allegations of the Claimant.

8. Moreover, and as a consequence of the aforementioned consideration, the Chamber established that in accordance with art. 9 par. 3 of the Procedural Rules it shall take a decision upon the basis of the documents already on file.

9. On account of the above, the Chamber highlighted that the underlying issue in this dispute was to determine as to whether the employment contract had been terminated by the Claimant with just cause and, subsequently, to determine the consequences thereof.

10. In this context, first and foremost, the Chamber agreed that since the claim of the Claimant has remained uncontested, there is no need to enter into an analysis as to whether clause 2) of the 'Special Provisions' of the employment contract in the matter at stake can be considered acceptable or applicable.

11. Having said that, the members of the DRC observed that the Respondent had been put in default of payment of his salaries by the Claimant initially on 1 December 2016, once again on 21 February 2017 and one last time on 12 May 2017. The Chamber took into account that in its reply to the Claimant's first default notice the Respondent had merely asked to be given another 30 days to pay its debt, but that the Respondent had not replied in writing to the Claimant's second and third default notices and thus had not denied the existence of the debt towards the Claimant as specified by the latter in said default notices. In this respect, the Chamber also took into account the fact that, as months went by, the Respondent appears to have only partially remedied its fault, namely by paying one outstanding salary each time. Furthermore, the Chamber stressed that when the Claimant terminated the employment contract on 24 May 2017, he had not received 5 consecutive salary payments as of December 2016, which allegation remained uncontested.

12. On account of the above, the Chamber concluded that the Respondent had blatantly neglected its contractual obligations towards the Claimant by failing to pay the latter 5 consecutive monthly salaries.

13. With the foregoing in mind, the Chamber considered that the Respondent was found to be in breach of the contract and that, in line with the Chamber's longstanding and well-established jurisprudence the breach was of such seriousness that the Claimant had just cause to unilaterally terminate the employment contract with the Respondent on 24 May 2017.

14. On account of the above-mentioned considerations, the Chamber decided that the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant.

15. In continuation, prior to establishing the consequences of the termination of the employment contract with just cause by the Claimant, the Chamber decided that the Respondent must fulfil its obligations as per the employment contract in accordance with the general legal principle of "*pacta sunt servanda*". Consequently, the Chamber decided that the Respondent is liable to pay to the Claimant 5 monthly salaries, as from December 2016 until April 2017, in the amount of EUR 50,000.

16. In addition, taking into consideration the Claimant's claim, the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* as of the day

following the day on which each instalment fell due in accordance with the employment contract until the date of effective payment.

17. As regards the payment of 13,343 requested by the Claimant in relation to a *"minimum wage"* for the months as from September 2016 until 24 May 2017, 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 concluded that the Claimant did not provide sufficient evidence corroborating his entitlement to said additional remuneration. Indeed, the employment contract does not indicate any monetary value in respect of the Minimum Wage in Country D. Furthermore, the document submitted by the Claimant, *i.e.* a copy of the alleged ministerial web page from which he calculated the amount of the minimum wage in Country D in relation to undefined collective labour agreements for the relevant period, does not prove any specific entitlement of the Claimant to a *"minimum wage"*.

18. In continuation and having established that the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant, the Chamber decided that, taking into consideration art.17 par. 1 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract in addition to the aforementioned outstanding remuneration.

19. In this context, the Chamber outlined that in accordance with said provision 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.

20. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a 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 contract at the basis of the matter at stake.

21. 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. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the Claimant under the terms of the

employment contract as from its termination and concluded that the Claimant would have received EUR 350,000 as remuneration had the employment contract been executed until its regular expiry date, *i.e.* 31 May 2019.

22. In continuation the Chamber assessed as to whether the Claimant has 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 DRC, such remuneration under a new employment contract(s) 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.

23. The Chamber recalled that, on 10 August 2017, the Claimant signed an employment contract with the Club of Country B, Club E, valid as from 11 August 2017 until 30 June 2018, which entitled him to a monthly salary of 13,500, plus 15,750 payable on 1 November 2017 and 15,750 payable on 1 April 2018.

24. 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 EUR 310,500 to the Claimant as compensation for breach of contract.

25. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the amount of compensation as of the date on which the claim was lodged, *i.e.* 30 June 2017, until the date of effective payment.

26. Subsequently, the DRC analysed the request of the Claimant corresponding to compensation for sporting and financial damages in the amount of EUR 350,000. In this regard, the Chamber deemed it appropriate to point out that the request for said compensation presented by the Claimant had no legal or regulatory basis and that no corroborating evidence had been submitted that demonstrated or quantified the damage suffered.

27. In addition, as regards the claimed legal expenses, the Chamber referred to art. 18 par. 4 of the Procedural Rules as well as to its longstanding and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber. Consequently, the Chamber decided to reject the Claimant's request relating to legal expenses.

28. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim lodged 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, outstanding remuneration in the amount of EUR 50,000, plus 5% interest *p.a.* as follows:

   a. 5% *p.a.* on EUR 10,000 as of 2 January 2017 until the date of effective payment;

   b. 5% *p.a.* on EUR 10,000 as of 31 January 2017 until the date of effective payment;

   c. 5% *p.a.* on EUR 10,000 as of 1 March 2017 until the date of effective payment;

   d. 5% *p.a.* on EUR 10,000 as of 31 March 2017 until the date of effective payment;

   e. 5% *p.a.* on EUR 10,000 as of 1 May 2017 until the date of effective payment.

3. The Respondent 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 EUR 310,500, plus 5% interest *p.a.* as from 30 June 2017 until the date of effective payment.

4. In the event that the amounts due to the Claimant in accordance with the above-mentioned numbers 2. and 3. are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. Any further claim lodged by the Claimant is rejected.

6. The Claimant is directed to inform the Respondent 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.

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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:

Court of Arbitration for Sport (CAS)
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For the Dispute Resolution Chamber:

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Encl.: CAS directives