



Decision of the Dispute Resolution Chamber (DRC) judge

passed on 16 August 2018,

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

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
between the parties in connection with overdue payables

I. Facts of the case

1. On 4 August 2016, 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 valid as from 8 August 2016 until 30 March 2018.
2. On 30 March 2017, the Claimant and the Respondent signed a mutual termination agreement.
3. According to the mutual termination agreement, the Respondent acknowledged that it had an obligation to pay the Claimant the amount of EUR 5,000, as follows:
 - EUR 1,000 upon the signature of the termination agreement;
 - EUR 2,000 on 30 April 2017;
 - EUR 2,000 on 30 July 2017.
4. Moreover, the mutual termination agreement stipulated the following:

"8. If any of the above amounts are not paid to the [Claimant's] account on the dates agreed the [Claimant] will be entitled to the amount of 1000 Euro (One thousand Euros) as a penalty"
5. By correspondence dated 7 May 2018, the Claimant put the Respondent in default of payment for the total amount of EUR 6,000, setting a 10 days' time limit in order to remedy the default.
6. On 21 May 2018, the Claimant lodged a claim against the Respondent in front of FIFA asking that the Respondent be ordered to pay to him overdue payables in the amount of EUR 6,000, corresponding to all the amounts mentioned in the termination agreement (incl. the amount stipulated in clause 8 of the mutual termination agreement), plus interest and legal fees.
7. The Respondent sent an unsolicited correspondence to FIFA before being notified of the claim with the following contents:

"we have already spoken to the [Claimant] and made a payment to his account that we inclose in our email. We have agreed with the form of payment and the remaining debt to the [Claimant] will be paid according to our agreement".
8. Subsequently, the Respondent was invited to formally reply to the claim, but only did so after the expiration of the deadline granted by FIFA.

II. Considerations of the DRC judge

1. First of all, 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 21 May 2018. Consequently, the Rules Governing the Procedures of the Players'

Status Committee and the Dispute Resolution Chamber (edition 2018; hereinafter: *the Procedural Rules*) are applicable to the matter at hand (cf. art. 21 of the Procedural Rules).

2. Subsequently, the DRC judge referred to art. 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 analysed 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 (edition 2018), and considering that the present claim was lodged on 21 May 2018, the 2018 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 emphasised 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 this, the DRC judge acknowledged that, on 4 August 2016, the Claimant and the Respondent signed an employment contract valid as from 8 August 2016 until 30 March 2018.
6. In this respect, the DRC judge noted that, on 30 March 2017, the Claimant and the Respondent signed a mutual termination agreement, by means of which the Respondent acknowledged that it had an obligation to pay the Claimant the amount of EUR 5,000, as follows:
 - EUR 1,000 upon the signature of the termination agreement;
 - EUR 2,000 on 30 April 2017;
 - EUR 2,000 on 30 July 2017.
7. In continuation, the DRC judge duly noted that the Claimant lodged a claim against the Respondent in front of FIFA, maintaining that the Respondent has overdue payables towards him, corresponding to the total amount stipulated in the mutual termination agreement.
8. In this context, the DRC judge took particular note of the fact that, on 7 May 2018, the Claimant put the Respondent in default of payment of the aforementioned amount, setting a 10 days' time limit in order to remedy the default.
9. Consequently, the DRC judge concluded that the Claimant had duly proceeded in accordance with art. 12bis par. 3 of the Regulations, which stipulates that the creditor (player or club) must have put the debtor club in default in writing and have granted

a deadline of at least ten days for the debtor club to comply with its financial obligation(s).

10. Subsequently, the DRC judge observed that the Respondent, in spite of having been invited to do so, had, for its part, failed to present its response to the claim of the Claimant within the relevant time limit set by FIFA, *i.e.* 12 July 2018. In fact, the reply of the Respondent was only received on 30 July 2018. As a result, bearing in mind the constant jurisprudence of the DRC applicable in this regard and in relation to art. 9 par. 3 of the Procedural Rules, the DRC judge decided not to take into account the reply of the Respondent and established that, in accordance with the aforementioned provision, he shall take a decision on the basis of those documents on file that were provided prior to the deadline set by FIFA.
11. On account of the documentation on file submitted prior to expiry of the time limit set by FIFA, the DRC judge concluded that the Claimant had substantiated his claim pertaining to overdue payables with sufficient documentary evidence and that there was no conclusive evidence demonstrating that the Claimant had in fact received the claimed amount of EUR 5,000.
12. 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 EUR 5,000, corresponding to the amount stipulated in the mutual termination agreement.
13. In addition, the DRC judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
14. 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 overdue payables in the total amount of EUR 5,000.
15. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber, the DRC judge decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on said amount as from the day following the respective due dates of each instalment until the date of effective payment.
16. Moreover, the DRC judge observed that, in his claim, the Claimant requested the payment of an additional amount of EUR 1,000, which would correspond to the application in the matter at stake of clause 8 of the mutual termination agreement, and which was drafted as follows:

"8. If any of the above amounts are not paid to the players account on the dates agreed the player will be entitled to the amount of 1000 Euro (One thousand Euros) as a penalty"
17. In this respect, the DRC judge observed that the contents of the aforementioned clause were clear and proportional. Moreover, the DRC judge understood that, in view of his previous considerations, said clause was fully applicable due to the Respondent's default in settling its debt towards the Claimant within the agreed due dates. Therefore, in application of the general legal principle of *pacta sunt servanda*, the DRC judge agreed that Respondent is liable to pay to the Claimant the amount stated in clause 8 of the mutual termination agreement, *i.e.* EUR 1,000.

18. In continuation, taking into account the consideration under number II. 12. above, the DRC judge referred to art. 12bis par. 2 of the Regulations which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
19. The DRC judge established that in virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. Bearing in mind that the Respondent did not reply to the claim of the Claimant, the DRC judge decided to impose a fine on the Respondent in accordance with art. 12bis par. 4 lit. c) of the Regulations. Taking into consideration the total amount due of EUR 6,000, the DRC judge regarded a fine amounting to CHF 1,000 as appropriate and hence decided to impose said fine on the Respondent.
20. In this respect, the DRC judge wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with art. 12bis par. 6 of the Regulations.
21. Moreover, the DRC judge decided to reject the Claimant's claim pertaining to legal costs in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber's respective longstanding jurisprudence in this regard.

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, overdue payables in the amount of EUR 5,000, plus 5% interest *p.a.*, calculated as follows:
 - 5% *p.a.* over the amount of EUR 1,000 as from 31 March 2017 until the date of effective payment;
 - 5% *p.a.* over the amount of EUR 2,000 as from 1 May 2017 until the date of effective payment;
 - 5% *p.a.* over the amount of EUR 2,000 as from 31 July 2017 until the date of effective payment;
3. In the event that the amount plus interest 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. The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of EUR 1,000 as penalty fee.
5. In the event that the aforementioned amount due to the Claimant 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 limits and the present matter shall be submitted the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance are to be made and to notify the DRC judge of every payment received.
7. Any further claim lodged by the Claimant is rejected.
8. The Respondent is ordered to pay a fine in the amount of CHF 1,000. The fine is to be paid **within 30 days** of notification of the present decision to FIFA to the following bank account **with reference to case nr. XXX**:

UBS Zurich
Account number 366.677.01U (FIFA Players' Status)
Clearing number 230
IBAN: CH27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A

Note relating to the motivated decision (legal remedy):

According to article 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
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 DRC judge:

Omar Ongaro
Football Regulatory Director

Encl: CAS directives