

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 10 August 2018,

in the following composition:

Geoff Thompson (England), Chairman
Carlos González Puche (Colombia), member
Eirik Monsen (Norway), member
Juan Bautista Mahiques (Argentina), member
Daan de Jong (The Netherlands), member

on the claim presented by the player,

Player A, Country B

as Claimant / Counter-Respondent

against the club,

Club C, Country D

as Respondent / Counter-Claimant

regarding an employment-related dispute
between the parties

I. Facts of the case

1. On 20 July 2014, the Player of Country B, Player A (hereinafter: *the Claimant / Counter-Respondent*), and the Club of Country D, Club C (hereinafter: *the Respondent / Counter-Claimant*), signed an employment contract (hereinafter: *the contract*), valid as from 22 July 2014 until 21 July 2017.
2. Pursuant to clause 4.1 of the contract, the Claimant / Counter-Respondent was entitled to receive an “*annual salary*” of USD 1,100,000 payable as follows:
 - Monthly salary of USD 60,000 payable “*at the end of every Gregorian month*”;
 - “*Advance of payment*” amounting to USD 380,000 and payable by no later than 30 June of each season.
3. On 14 April 2016, the Claimant / Counter-Respondent signed a document labeled “*Acknowledgment & Statement of Clearance*” (hereinafter: *the statement of clearance*). In this document the Claimant / Counter-Respondent stated that:
“*According to the transfer agreement signed between the Tripartite ([Respondent / Counter-Claimant], Club E and me), I agree and acknowledge that my contract with my former club shall be tacitly ended by laws only if I sign a new employment contract with Club E due to my transfer from [the Respondent / Counter-Claimant] on a permanent basis as of 14/04/2016, according to which I state hereby that I received all my financial rights from [the Respondent / Counter-Claimant] in accordance with the contract until this date except an amount of USD 120.000 (one hundred twenty thousand American dollars). Therefore, I am committed not to file any financial or legal claims exceeding the above amount of USD 120.000 against the [Respondent / Counter-Claimant] or any other concerned party after the statement signature date*”.
4. On 1 September 2017, the Claimant / Counter-Respondent put the Respondent / Counter-Claimant in default of payment for USD 120,000, *i.e.* the total amount established in the statement of clearance. In its reply to this default notice, the Respondent / Counter-Claimant argued that there is no “*legal and/or contractual basis for the [Claimant / Counter-Respondent] to claim the alleged outstanding*” amount.
5. On 7 September 2017, the Claimant / Counter-Respondent sent a second default notice to the Respondent / Counter-Claimant for the same amount and informed that he was “*still willing to accept USD 120,000 as final and amicable*” solution. The Claimant / Counter-Respondent also held in said correspondence that if said amount was not paid he would lodge a claim before FIFA for the total amount due by the Respondent / Counter-Claimant, which, according to the Claimant / Counter-Respondent’s estimate, amounted to USD 276,000.

6. By means of a letter dated 11 September 2017, the Respondent / Counter-Claimant informed the Claimant / Counter-Respondent that *"it appears"* that it paid the USD 120,000 after the Claimant / Counter-Respondent was transferred to the Club of Country B, Club E (hereinafter: *Club E*).
7. On 20 September 2017, the Claimant / Counter-Respondent lodged a claim before FIFA and requested the payment of a total amount of USD 276,000, plus 5% interest *p.a.* as from 20 April 2016 until the effective date of payment, consisting of:
 - USD 120,000 as outstanding salaries for February 2016 and March 2016 (USD 60,000 each month);
 - USD 40,000 *"corresponding to his prorated salaries for 20 days in April 2016"*
 - USD 116,000 *"corresponding to the proportion (3.7 out of 12 months) of the advance payment the [Claimant / Counter-Respondent] would be due for the season 2015/2016"*. According to the Claimant / Counter-Respondent, the *"advance of payment"* should be paid in equal monthly instalments of USD 31,667.
8. More specifically, the Claimant / Counter-Respondent explained that he rendered his services to the Respondent / Counter-Claimant until 20 April 2016, date on which he was transferred to Club E. According to the Claimant / Counter-Respondent, during the year 2016 he only received USD 60,000 corresponding to his salary for January 2016.
9. Regarding the statement of clearance, the Claimant / Counter-Respondent held by means of this document that he *"consented to waive most of his past, due and unpaid salaries if [the Respondent / Counter-Claimant] accepted his transfer to Club E and paid him US\$ 120,000"*. As the Respondent / Counter-Claimant failed to pay the amount established in the statement of clearance, the Claimant / Counter-Respondent argued that he is *"entitled to claim and require payment of all amounts due and unpaid under the contract"*, i.e. USD 276,000.
10. In its reply to the claim lodged by the Claimant / Counter-Respondent, the Respondent / Counter-Claimant requested the complete rejection of the Claimant / Counter-Respondent's claim.
11. In this regard, the Respondent / Counter-Claimant stated that the statement of clearance is a valid and binding document between the parties arguing that *"any person or party signing a document of legal importance with or without knowledge of its precise content, as a general rule, does so on its own responsibility"*.
12. According to the Respondent / Counter-Claimant, the Claimant / Counter-Respondent is acting in bad faith considering that he specified in the statement of

clearance that he *“received all his financial rights”* from the Respondent / Counter-Claimant until 14 April 2016, i.e. date of the statement of clearance.

13. Furthermore, the Respondent / Counter-Claimant held that the Claimant / Counter-Respondent’s financial entitlement pursuant to said document is limited to USD 120,000. In this respect, the Respondent / Counter-Claimant stated that *“the previous administration of the [Respondent / Counter-Claimant] had made a last payment of USD 120,000”* to the Claimant / Counter-Respondent’s Bank account in Country D after he was transferred to Club E. In this regard, the Respondent / Counter-Claimant pointed out that it performed the payment to the bank account previously provided by the Claimant / Counter-Respondent, as he had not communicated any change in his bank account.
14. Finally, the Respondent / Counter-Claimant explained that its *“new management doesn’t have in possession of the [Claimant / Counter-Respondent] record as it has not access to the file because loss of record”* and therefore, the Respondent / Counter-Claimant requested that the Claimant / Counter-Respondent was to provide the bank statements *“to evidence his allegation of non-payment of USD 120,000”*.
15. The Claimant / Counter-Respondent submitted his *replica*, reiterating his arguments and confirming his position with regards to his statement of claim.
16. Moreover, the Claimant / Counter-Respondent argued that he *“consented to waive most of his past, due and unpaid salaries if [the Respondent / Counter-Claimant] paid him US\$ 120,000”*. According to the Claimant / Counter-Respondent, the *“consent was conditional to the payment and, as the payment was never performed, the [statement of clearance] has become null and void”*.
17. Furthermore, the Claimant / Counter-Respondent explained that the Respondent / Counter-Claimant’s administration management has not changed and that the Respondent / Counter-Claimant has never performed the payment of the USD 120,000 established in the statement of clearance.
18. In this regard, the Claimant / Counter-Respondent stated that he *“has no longer access to his former account in Country D”* and that the Respondent / Counter-Claimant did not provide any evidence that confirms the payment. According to the Claimant / Counter-Respondent, *“it cannot be requested from [the Claimant / Counter-Respondent] to produce negative evidence”*.
19. On 5 February 2018, the Respondent / Counter-Claimant submitted its *duplica* and simultaneously lodged a counterclaim against the Claimant / Counter-Respondent requesting the *“reimbursement”* of a total amount USD 120,000, arguing that it

performed the payment contained in the statement of clearance *"in two occasions"*.

20. Furthermore, the Respondent / Counter-Claimant requested the Claimant / Counter-Respondent to bear *"all legal and procedural costs"*.
21. In support of its claim, the Respondent / Counter-Claimant explained that in November 2016 it made a payment to the Claimant / Counter-Respondent's Bank account in Country D in the amount of 450,000, amount that according to the Respondent / Counter-Claimant corresponds to USD 120,000.
22. Notwithstanding the foregoing, the Respondent / Counter-Claimant argued that on 5 February 2018, as a *"gesture of good faith"* and *"with the sole intention to try and settle this matter in amicable way"*, it performed a new payment of USD 120,000 to the bank account provided by the Claimant / Counter-Respondent's legal representative.
23. As a consequence of the above, the Respondent / Counter-Claimant held that there are no *"outstanding obligations towards the [Claimant / Counter-Respondent]"* and that the Claimant / Counter-Respondent should reimburse USD 120,000 to the Respondent / Counter-Claimant as he received a payment for this amount on two different occasions.
24. In his reply to the counterclaim, the Claimant / Counter-Respondent requested the complete rejection of the Respondent / Counter-Claimant's counterclaim.
25. In addition, the Claimant / Counter-Respondent acknowledged the payment made by the Respondent / Counter-Claimant on 5 February 2018 for an amount of USD 120,000 and therefore, reduced the claimed amount to USD 156,000 *"corresponding to the difference between the original claimed amount of USD 276,000 [...] and the partial payment of USD 120,000 performed by [the Respondent / Counter-Claimant] on 5 February 2018"*.
26. The Claimant / Counter-Respondent further asks to be awarded US\$ 10,570 *"corresponding to "8,96% interest on default over the amount of USD 120,000, counted from 20 April 2016 until 5 February 2018 (5% per annum prorated per diem)"* as well as 5% interest *p.a.* on the amount of USD 156,000 as from 16 April 2016 until the date of effective payment.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *DRC* or *Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 20 September 2017. Consequently, the 2017 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 of the 2017 and 2018 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 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 (editions 2016 and 2018), and considering that the present matter was submitted to FIFA on 20 September 2017, the 2016 edition of the aforementioned regulations (hereinafter: *the 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 members of the Chamber entered into the substance of the matter, while emphasizing that, although having acknowledged all the above-mentioned facts, 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. Firstly, the DRC acknowledged that, on 20 July 2014, the Claimant / Counter-Respondent and the Respondent / Counter-Claimant, signed an employment contract valid as from 22 July 2014 until 21 July 2017. According to clause 4 of the contract, the Claimant / Counter-Respondent was entitled to receive an "*annual salary*" of USD 1,100,000.
6. In continuation, the members of the Chamber acknowledged that, on 14 April 2016, the Claimant / Counter-Respondent signed a document labeled "*Acknowledgment & Statement of Clearance*". In this document the Claimant / Counter-Respondent declared, *inter alia*, that:
"[...] *I state hereby that I received all my financial rights from [the Respondent / Counter-Claimant] in accordance with the contract until this date except an*

amount of USD 120.000 (one hundred twenty thousand American dollars). Therefore, I am committed not to file any financial or legal claims exceeding the above amount of USD 120.000 against the [Respondent / Counter-Claimant] or any other concerned party after the statement signature date”.

7. The DRC further observed that, on 20 September 2017, the Claimant lodged a claim against the Respondent before FIFA requesting the payment of outstanding remunerations in the amount of USD 276,000.
8. In this regard, the Chamber took note that the Claimant / Counter-Respondent argued that because of the Respondent / Counter-Claimant’s failure to pay him the amount established in the statement of clearance, *i.e.* USD 120,000, he was entitled to claim all amounts due and unpaid under the contract, sum that according to the Claimant / Counter-Respondent amounted to USD 276,000.
9. Equally, the members of the Chamber observed that the Claimant / Counter-Respondent acknowledged a payment made by the Respondent / Counter-Claimant on 5 February 2018 for an amount of USD 120,000 and therefore, reduced the claimed amount to USD 156,000 *“corresponding to the difference between the original claimed amount of USD 276,000 [...] and the partial payment of USD 120,000 performed by [the Respondent / Counter-Claimant]”*.
10. Subsequently, the Dispute Resolution Chamber highlighted that, on 5 February 2018, the Respondent / Counter-Claimant on its part lodged a counterclaim against the Claimant / Counter-Respondent.
11. In this regard, the Chamber observed that the Respondent / Counter-Claimant requested the *“reimbursement”* of a total amount USD 120,000, arguing that it performed the payment contained in the statement of clearance *“in two occasions”*.
12. In particular, the DRC observed that the Respondent / Counter-Claimant explained that in November 2016 it performed a payment for USD 120,000 to the Claimant / Counter-Respondent’s Bank account in Country D. In addition, the members of the Chamber acknowledged that the Respondent / Counter-Claimant argued that on 5 February 2018, and as a *“gesture of good faith”*, it performed a new payment of USD 120,000 to the bank account provided by the Claimant / Counter-Respondent’s legal representative.
13. After having carefully examined the parties’ positions, the DRC highlighted that the Claimant / Counter-Respondent did not contest that he had in fact signed the statement of clearance. In this regard, the members of the Chamber took into account that the wording of said document is clear as the Claimant / Counter-Respondent declared having received all his *“financial rights from [the Respondent*

/ Counter-Claimant] in accordance with the contract until this date except an amount of USD 120.000” and that he “committed not to file any financial or legal claims exceeding the above amount of USD 120.000 against the [Respondent / Counter-Claimant] or any other concerned party after the statement signature date”.

14. In the light of all of the above, the members of the DRC concluded that by drafting and signing the statement of clearance, the Claimant / Counter-Respondent limited his financial rights up to the amount of USD 120,000 and therefore, waived his right to claim any further monies from the Respondent / Counter-Claimant.
15. In this respect, the members of the Chamber wished to stress that it has remained undisputed that, on 5 February 2018, the Claimant / Counter-Respondent received from the Respondent / Counter-Claimant the USD 120,000 established in the statement of clearance.
16. Consequently, the Dispute Resolution Chamber decided that it must reject the claim put forward by the Claimant / Counter-Respondent.
17. Finally, and irrespective of the aforementioned consideration and taking into account the documentation presented by the Respondent / Counter-Claimant in support of its counterclaim, the members of the DRC referred to art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. The application of the said principle in the present matter led the members of the Dispute Resolution Chamber to establish that the Respondent / Counter-Claimant had not sufficiently substantiated its allegations, as it did not present any conclusive documentary evidence which could corroborate that it performed the payment contained in the statement of clearance in two different occasions.
18. More specifically, the members of the Chamber concluded that the Respondent / Counter-Claimant did not present pertinent evidence that confirms that it performed a first payment for 450,000, allegedly equivalent to USD 120,000, to the Claimant / Counter-Respondent’s Bank in Country D in November 2016.
19. On account of the above, the Chamber decided to reject the counterclaim of the Respondent / Counter- Claimant in its entirety.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant / Counter-Respondent, Player A, is rejected.
2. The counter-claim of the Respondent / Counter-Claimant, Club C, is rejected.

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
Avenue de Beaumont 2
1012 Lausanne
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For the Dispute Resolution Chamber:

Omar Ongaro
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Encl. CAS directives