

Decision of the Dispute Resolution Chamber

passed by way of circulars on 19 November 2018,

in the following composition:

Geoff Thompson (England), Chairman
Philippe Diallo (France), member
Jon Newman (USA), 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
between the parties in connection with overdue payables

I. Facts of the case

1. On 15 July 2015, 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 the date of signature until the end of the 2017/2018 sporting season.
2. In accordance with the contract, the Respondent undertook to pay to the Claimant, *inter alia*, EUR 302,500 in 10 equal monthly instalments of EUR 30,250 each, as from September 2017 until June 2018, falling due "*at the last day of every month*".
3. By correspondence dated 14 August 2018, the Claimant put the Respondent in default of payment of EUR 181,500 setting a time limit of 10 days in order to remedy the default.
4. On 12 September 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 total amount of EUR 181,500, corresponding to his outstanding salaries as from January 2018 until June 2018 (EUR 30,250 each for 6 months), plus 5% interest *p.a.* as from the due dates.
5. In reply to the claim, the Respondent rejected the Claimant's claim and affirmed that it had made "*several payments to the [Claimant] related to the employment contract and as of today, [it] has no overdue and unpaid debt towards the [Claimant]*". In this regard, the Respondent indicated that "*payment documents [have] to be presented, the translation work is still being done*".
6. In this regard, no further documentation was provided by the Respondent.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter: *Chamber* or *DRC*) 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 12 September 2018. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2018; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 of the *Procedural Rules*).

2. Subsequently, 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 conjunction with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2018), it 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 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 on the Status and Transfer of Players (edition 2018), and considering that the present claim was lodged on 12 September 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 and the applicable regulations having been established, the DRC entered into the substance of the matter. In this respect, the DRC started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. 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 this, the DRC acknowledged that the Claimant and the Respondent signed an employment contract valid as from the date of signature, *i.e.* 15 July 2015, until the end of the 2017/2018 Season in Country D.
6. Moreover, the DRC noted that, according to the contract, the Claimant was, *inter alia*, entitled to receive from the Respondent the amount of EUR 302,500, payable in 10 equal monthly instalments of EUR 30,250 each, as from September 2017 until June 2018, falling due "*at the last day of every month*".
7. In continuation, the DRC duly noted that the Claimant lodged a claim against the Respondent in front of FIFA, maintaining that the Respondent has overdue payables towards him in the total amount of EUR 181,500, corresponding to his outstanding salaries as from January 2018 until June 2018, *i.e.* EUR 30,250 each for 6 months, plus 5% interest *p.a.* as from the due dates.
8. In this context, the DRC took particular note of the fact that, on 14 August 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 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 took into account that the Respondent, for its part, affirmed that it had made "*several payments*" to the Claimant and that "*as of today, it has no overdue and unpaid debt towards [the Claimant]*". Moreover, the DRC observed that the Respondent did not present any documentation at all in support of its allegations.
11. In this respect, the DRC emphasized that according to art. 12 par. 3 of the Procedural Rules, any party claiming a right on the basis of an alleged fact shall carry the burden of proof.
12. On account of the above, and in view of the fact that the Respondent did not submit any corroborating evidence that it had duly complied with its contractual obligations towards the Claimant, the DRC considered that the arguments raised by the Respondent cannot be considered a valid reason for the non-payment of the monies claimed by the Claimant, in other words, the reasons brought forward by the Respondent in its defence do not exempt the Respondent from its obligation to fulfil its contractual obligations towards the Claimant.
13. Consequently, the Chamber decided to reject the argumentation put forward by the Respondent in its defence.
14. On account of the aforementioned considerations, the DRC established that the Respondent failed to remit the Claimant's remuneration in the total amount of EUR 181,500, corresponding to his outstanding salaries as from January 2018 until June 2018 (*i.e.* EUR 30,250 each for 6 months).
15. In addition, the DRC established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
16. Consequently, the DRC 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 181,500.
17. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber, the DRC decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on each of the instalments included in the amount of EUR 181,500 as of the day following the day on which the relevant instalment fell due until the date of effective payment.
18. In continuation, taking into account the consideration under number II./15. above, the DRC 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 established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. Bearing in mind that the Respondent duly replied to the claim of the Claimant and in the absence of the circumstance of repeated offence, the DRC decided to impose a warning on the Respondent in accordance with art. 12bis par. 4 lit. a) of the Regulations.
20. In this connection, the DRC 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.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player A, is 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 181,500, plus interest at the rate of 5% *p.a.* until the date of effective payment as follows:
 - a. 5% *p.a.* on the amount of EUR 30,250 as from 1 February 2018;
 - b. 5% *p.a.* on the amount of EUR 30,250 as from 1 March 2018;
 - c. 5% *p.a.* on the amount of EUR 30,250 as from 1 April 2018;
 - d. 5% *p.a.* on the amount of EUR 30,250 as from 1 May 2018;
 - e. 5% *p.a.* on the amount of EUR 30,250 as from 1 June 2018;
 - f. 5% *p.a.* on the amount of EUR 30,250 as from 1 July 2018.
3. In the event that the amount due to the Claimant, plus interest, 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 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 of every payment received.
5. A warning is imposed on the Respondent.

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
e-mail: info@tas-cas.org
www.tas-cas.org

For the Dispute Resolution Chamber:

Omar Ongaro
Football Regulatory Director

Encl. CAS directives