

Decision of the Dispute Resolution Chamber (DRC) judge

passed on 12 February 2019,

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 31 August 2016, the Player of Country B, Player A (hereinafter: *the Claimant* or *the player*), and the Club of Country D, Club C (hereinafter: *the Respondent* or *the club*), signed an employment contract valid as from the date of signature until 31 May 2018.
2. In accordance with the employment contract, the Respondent undertook to pay to the Claimant, *inter alia*, a monthly salary of EUR 40,000 payable on the 30th day of the relevant month. Furthermore, pursuant to the same contract, the Respondent committed to pay the Claimant a bonus of EUR 25,000 "*if the player plays in the first eleven 25 matches*".
3. By correspondence dated 4 October 2018, the Claimant put the Respondent in default of payment of EUR 85,000, corresponding to the salary for the months of April and May 2018 and the above-mentioned bonus for the season 2017-2018. By means of such correspondence, the Claimant set a 10 days' time limit in order to remedy the default.
4. On 19 November 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 85,000 corresponding to:
 - a) EUR 20,000 for part of the salary of April 2018;
 - b) EUR 40,000 for the entire salary of May 2018;
 - c) EUR 25,000 for the bonus set out in the contract in case "*the player plays in the first eleven 25 matches*".
5. The Claimant further asked to be awarded interest of 5% on the claimed amount as of "*the time of the contract breach (May 2018) until the date of effective payment*".
6. Furthermore, the Claimant submitted documentation according to which the player allegedly played more than 25 matches with the Respondent, in the starting eleven, during season 2017-2018.
7. In reply to the claim, the Respondent did not reject the Claimant's allegations and the entitlement to the bonus. However, it argued that the interest should start running as of the date of the DRC decision. As to the main amount requested by the Claimant, the Respondent stated that it is currently facing financial hardship and requested to be provided with "*a reasonable time to charge the obligations towards the Claimant*".

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 19 November 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 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 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 19 November 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 the Claimant and the Respondent signed an employment contract valid as from 31 August 2016 until 31 May 2018. The DRC judge also took note that, pursuant to the employment contract, the Claimant was entitled to receive from the Respondent, *inter alia*, a monthly salary of EUR 40,000 and a bonus of EUR 25,000 in case the Claimant plays in the "*first eleven*" for 25 matches.
6. The Claimant lodged a claim against the Respondent in front of FIFA, maintaining that the Respondent has overdue payables towards him in the amount of EUR 85,000, corresponding to:
 - a) EUR 20,000 for part of the salary of April 2018;
 - b) EUR 40,000 for the salary of May 2018;
 - c) EUR 25,000 for the bonus set out for season 2017/2018, in case "*the player plays in the first eleven 25 matches*".

7. In this context, the DRC judge took particular note of the fact that, on 4 October 2018, the Claimant put the Respondent in default of payment of the aforementioned amounts, setting a 10 days' time limit in order to remedy the default.
8. 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).
9. Subsequently, the DRC judge took into account that the Respondent, for its part, did not dispute that the Claimant was entitled to the salary and to the aforementioned bonus for the requested period. It stated, however, that the interest requested by the Claimant should start as of the date of the decision and that it is currently facing financial hardship.
8. In this regard, the DRC judge considered that the arguments raised by the Respondent cannot be considered a valid reason for 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.
9. Consequently, the DRC judge decided to reject the argumentation put forward by the Respondent in its defence.
10. On account of the aforementioned considerations, the DRC judge established that the Respondent failed to remit the Claimant's remuneration in the total amount EUR 85,000, corresponding to part of the salary for the month of April 2018, the entire salary for May 2018 and the bonus set out in the contract for season 2017-2018.
11. 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.
12. 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 85,000.
13. 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 the amount of EUR 85,000, as from 1 June 2018 until the date of effective payment.

14. In continuation, taking into account the consideration under number II./11. 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.
15. The DRC judge 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 judge decided to impose a warning on the Respondent in accordance with art. 12bis par. 4 lit. a) of the Regulations.
16. In this connection, 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.
17. 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, overdue payables in the amount of EUR 85,000, plus interest at the rate of 5% *p.a.* as from 1 June 2018 until the date of effective payment.
3. Any further claim lodged by the Claimant is rejected.
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 judge of every payment received.
5. In the event that the aforementioned sum plus interest is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

6. 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:

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Encl: CAS directives