

Decision of the Dispute Resolution Chamber (DRC) judge

passed on 7 August 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 6 January 2018, 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 “*end of the football season 2017-2018*”. According to the information available on the Transfer Matching System (TMS), the transfer instruction of the Claimant from the Respondent to his new club, indicate that the employment contract came to an end on 19 May 2018.
2. In accordance with the employment contract, the Respondent undertook to pay to the Claimant a monthly salary of USD 6,000 payable at the end of the month, as well as a monthly housing allowance of 300. The employment contract provided that the total value of the contract is USD 30,000.
3. By correspondence dated 15 March 2019, the Claimant put the Respondent in default of payment of USD 25,000 and 1,500 setting a 10 days’ time limit in order to remedy the default, amounts corresponding to:
 - USD 1,000 for the remaining of the January 2018 salary;
 - USD 24,000 for the salaries of February, March, April and May 2018, for a value of USD 6,000 each;
 - 1,500 for the housing allowance for the months of January to May 2018 included, for a value of 300 each.
4. On 28 March 2019, 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 USD 25,000 and 1,500 corresponding to:
 - USD 1,000 for the remaining of the January 2018 salary;
 - USD 24,000 for the salaries of February, March, April and May 2018, for a value of USD 6,000 each;
 - 1,500 for the housing allowance for the months of January to May 2018 included, for a value of 300 each.
5. The Claimant further asks to be awarded interest from the due dates of each amount.
6. In spite of having been invited to do so, the Respondent has not replied to the claim.

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 28 March 2019. 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 2019) 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 2019), and considering that the present claim was lodged on 28 March 2019, the June 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. In particular, the DRC judge recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in the Transfer Matching System (TMS).
5. Having said this, the DRC judge acknowledged that the Claimant and the Respondent signed an employment contract valid as from the date of signature until the "*end of the football season 2017/2018*", and according to the transfer instruction of the Claimant from the Respondent to his new club, indicate that the employment contract came to an end on 19 May 2018. In accordance with the contract, the Claimant was entitled to receive from the Respondent, *inter alia*, monthly salary of USD 6,000 payable at the end of the month, as well as a monthly housing allowance of 300. The employment contract provided that the total value of the contract is USD 30,000.

6. 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 USD 25,000 and 1,500 corresponding to the following:
 - USD 1,000 for the remaining of the January 2018 salary;
 - USD 24,000 for the salaries of February, March, April and May 2018, for a value of USD 6,000 each;
 - 1,500 for the housing allowance for the months of January to May 2018 included, for a value of 300 each.
7. In this context, the DRC judge took particular note of the fact that, on 15 March 2019, 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, failed to present its response to the claim of the Claimant, in spite of having been invited to do so. In this way, the DRC judge considered that the Respondent renounced its right to defence and thus accepted the allegations of the Claimant.
10. Furthermore, as a consequence of the aforementioned consideration, the DRC judge concurred that in accordance with art. 9 par. 3 of the Procedural Rules he shall take a decision upon the basis of the documents already on file, in other words, upon the statements and documents presented by the Claimant.
11. Having said this, the DRC judge acknowledged that, in accordance with the employment contract provided by the Claimant, the Respondent was obliged to pay to the Claimant, as per the contract, the total amount of USD 30,000 in the form of a monthly salary of USD 6,000 payable at the end of the month, as well as a monthly housing allowance of 300.
12. Taking into account the documentation presented by the Claimant in support of his petition, the DRC judge concluded that the Claimant had substantiated his claim pertaining to overdue payables with sufficient documentary evidence.

13. 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 USD 25,000 and 1,500 corresponding to the following:
 - USD 1,000 for the remaining of the January 2018 salary;
 - USD 24,000 for the salaries of February, March, April and May 2018, for a value of USD 6,000 each;
 - 1,500 for the housing allowance for the months of January to May 2018 included, for a value of 300 each.
14. 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.
15. 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 USD 25,000 and 1,500.
16. 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 as follows:
 - 5% *p.a.* on USD 1,000 as from 1st February 2018 until the date of effective payment;
 - 5% *p.a.* on 300 as from 1st February 2018 until the date of effective payment;
 - 5% *p.a.* on USD 6,000 as from 1st March 2018 until the date of effective payment;
 - 5% *p.a.* on 300 as from 1st March 2018 until the date of effective payment;
 - 5% *p.a.* on USD 6,000 as from 1st April 2018 until the date of effective payment;
 - 5% *p.a.* on 300 as from 1st April 2018 until the date of effective payment;
 - 5% *p.a.* on USD 6,000 as from 1st May 2018 until the date of effective payment;
 - 5% *p.a.* on 300 as from 1st May 2018 until the date of effective payment,
 - 5% *p.a.* on USD 6,000 as from 1st June 2018 until the date of effective payment;
 - 5% *p.a.* on 300 as from 1st June 2018 until the date of effective payment.
17. In continuation, taking into account the consideration under number II./14. 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.
18. The DRC judge established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. Therefore, 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.

19. 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.
20. Furthermore, taking into account the consideration under number II./3. above, the DRC judge referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
21. In this regard, the DRC judge pointed out that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.
22. Therefore, bearing in mind the above, the DRC judge decided that, in the event that the Respondent does not pay the amounts due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations.
23. Finally, the DRC judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the Regulations.

III. Decision of the DRC judge

1. The claim of the Claimant, Player A, is accepted.
2. The Respondent, Club C, has to pay to the Claimant overdue payables in the amount of USD 25,000 and 1,500, plus interest at the rate of 5% *p.a.* until the date of effective payment as follows:
 - 5% *p.a.* on USD 1,000 as from 1st February 2018 until the date of effective payment;
 - 5% *p.a.* on 300 as from 1st February 2018 until the date of effective payment;
 - 5% *p.a.* on USD 6,000 as from 1st March 2018 until the date of effective payment;
 - 5% *p.a.* on 300 as from 1st March 2018 until the date of effective payment;
 - 5% *p.a.* on USD 6,000 as from 1st April 2018 until the date of effective payment;
 - 5% *p.a.* on 300 as from 1st April 2018 until the date of effective payment;
 - 5% *p.a.* on USD 6,000 as from 1st May 2018 until the date of effective payment;
 - 5% *p.a.* on 300 as from 1st May 2018 until the date of effective payment,
 - 5% *p.a.* on USD 6,000 as from 1st June 2018 until the date of effective payment;
 - 5% *p.a.* on 300 as from 1st June 2018 until the date of effective payment.
3. A warning is imposed on the Respondent.
4. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amount mentioned under point III./2. above.
5. The Respondent shall provide evidence of payment of the due amount plus interest in accordance with point III./2. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).
6. In the event that the amount due plus interest in accordance with point III./2. above is not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
7. The ban mentioned in point III./6. above will be lifted immediately and prior to its complete serving, once the due amount is paid.

8. In the event that the aforementioned sum plus interest is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

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
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Encl: CAS directives