

# Decision of the Dispute Resolution Chamber (DRC) judge

passed on 11 July 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 12 January 2016, 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 31 May 2016.
2. On 30 October 2017, the Claimant and the Respondent signed a "*Reconciliation Protocol*" (hereinafter: *Protocol*).
3. In accordance with the Protocol, the Respondent undertook to pay to the Claimant EUR 68,128.07, corresponding to outstanding salaries "*in connection with the [contract] made between the Parties between 12.01.2016 and 31.05.2016*", "*plus its interest with the maximum interest ...*" on 1 January 2018.
4. By means of clause 2 of the Protocol, "*in case of non-payment of the payment determined above [...] until the aforementioned date, the maximum interest rate announced by the Public Banks to be applied to foreign currency deposit accounts for up to 1 year shall be applied to the said amount from the aforementioned due date to the actual collection date [...]*".
5. By correspondence dated 26 March 2019, the Claimant put the Respondent in default of payment of EUR 68,128.07 with interest as of 31 May 2016 setting a 10 days' time limit in order to remedy the default.
6. On 10 April 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 EUR 68,128.07 corresponding to the amount set out in the Protocol.
7. The Claimant further asks to be awarded "*interests from 31.05.2016*" until the date of effective payment.
8. In spite of having been invited to do so and having been granted a time limit extension, 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 10 April 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 10 April 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.
5. Having said this, the DRC judge acknowledged that the Claimant and the Respondent signed an employment contract valid as from 12 January 2016 until 31 May 2016. Moreover, the DRC judge noted that on 30 October 2017 the Claimant and the Respondent signed a "*Reconciliation Protocol*" (hereinafter: *Protocol*) in accordance with which the Claimant was entitled to receive from the Respondent EUR 68,128.07 due on 1 January 2018.
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 EUR 68,128.07 corresponding to the amount set out in the Protocol.
7. In this context, the DRC judge took particular note of the fact that, on 26 March 2019, 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.
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 Protocol provided by the Claimant, the Respondent was obliged to pay to the Claimant EUR 68,128.07.
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 EUR 68,128.07 corresponding to the amount set out in the Protocol.
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 EUR 68,128.07.
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 of 5% *p.a.* on the amount of EUR 68,128.07 as from 2 January 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 in 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. 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 partially accepted.
2. The Respondent, Club C, has to pay to the Claimant the amount of EUR 68,128.07 plus 5% interest *p.a.* as of 2 January 2018 until the date of effective payment.
3. Any further request filed by the Claimant is rejected.
4. A warning is imposed on the Respondent.
5. 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 2 above.
6. The Respondent shall provide evidence of payment of the due amount in accordance with point 2 above to FIFA to the e-mail address [psdfifa@fifa.org](mailto:psdfifa@fifa.org), duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).
7. In the event that the amount due plus interest in accordance with point 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).
8. The ban mentioned in point 7 above will be lifted immediately and prior to its complete serving, once the due amount is paid.

9. 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.

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**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  
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For the DRC judge:

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Emilio García Silvero  
Chief Legal Officer

Encl. CAS directives