

Decision of the Dispute Resolution Chamber

passed by way of circulars on 12 August 2019,

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 10 August 2017, 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 valid as from the date of signature until 31 May 2019.
2. On 25 June 2018, the Claimant and the Respondent signed an agreement by means of which the employment contract was terminated by mutual consent of the parties (hereinafter: *the termination agreement*).
3. In accordance with the termination agreement, the Respondent undertook to pay to the Claimant the total amount of EUR 280,000 "*in accordance with the below payment plan*" as follows:
 - a. EUR 40,000 ("*already paid*") on 25 June 2018;
 - b. EUR 5,000 on 26 June 2018;
 - c. EUR 82,500 on 31 July 2018;
 - d. EUR 70,000 on 31 August 2018;
 - e. EUR 82,500 on 30 September 2018.
4. Clause 4 of the termination agreement (hereinafter: *the acceleration clause*) stipulates that "*in case of any delay on any of the above instalments in full or in part for 30 days following its due date, all the remaining instalment(s) shall be accelerated and become due and payable as of the date of the default automatically without the need of any notice notification and/or court verdict*".
5. On 13 March 2019, the Claimant put the Respondent in default of payment of EUR 240,000, corresponding to the last 4 instalments due under the termination agreement, setting a 10 days' time limit in order to remedy the default.
6. On 2 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 240,000 corresponding to the last 4 instalments due under the termination agreement.
7. The Claimant further asked to be awarded interest of 5% p.a. "*as from the due date which is 26 July 2018*". In this regard, the Claimant stated that "*for all dues, the starting date of default interest should be accepted as 26.07.2018 because of unpaid instalment on 26.06.2018*".
8. In spite of having been invited to do so, the Respondent has not replied to the claim.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *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 2 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 members of 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 2019), 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 par. 2 of the *Regulations on the Status and Transfer of Players* (edition 2019), and considering that the present claim was lodged on 2 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 Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and documentation on file. However, the DRC 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 following the conclusion of an employment contract on 10 August 2017, valid as from the date of signature until 31 May 2019, on 25 June 2018 the Claimant and the Respondent signed a termination agreement by means of which the Respondent undertook to pay to the Claimant a total amount of EUR 280,000 as follows:
 - a. EUR 40,000 ("*already paid*") on 25 June 2018;
 - b. EUR 5,000 on 26 June 2018;
 - c. EUR 82,500 on 31 July 2018;
 - d. EUR 70,000 on 31 August 2018;
 - e. EUR 82,500 on 30 September 2018.
6. In addition, the DRC observed that Clause 4 of the termination agreement stipulates that "*in case of any delay on any of the above instalments in full or in part for 30 days following its due date, all the remaining instalment(s) shall be accelerated and*

become due and payable as of the date of the default automatically without the need of any notice notification and/or court verdict".

7. Furthermore, the DRC took note 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 240,000 corresponding to the last four instalments due under the termination agreement.
8. In this context, the members of the DRC took particular note of the fact that, on 13 March 2019, the Claimant put the Respondent in default of payment of the amount of EUR 240,000 setting a time limit of 10 days 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, 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 considered that the Respondent renounced its right to defence and thus accepted the allegations of the Claimant.
11. Furthermore, as a consequence of the aforementioned consideration, the DRC concurred that in accordance with art. 9 par. 3 of the Procedural Rules, it 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.
12. In this respect, the DRC recalled that, in accordance with the termination agreement provided by the Claimant, the Respondent was obliged to pay to the Claimant the amount of EUR 280,000 in 5 instalments with due dates between 25 June 2018 and 30 September 2018.
13. Taking into account the documentation presented by the Claimant in support of his petition, the DRC concluded that the Claimant had substantiated his claim pertaining to overdue payables with sufficient documentary evidence.
14. On account of the aforementioned considerations, the Chamber established that the Respondent failed to remit to the Claimant the total amount of EUR 240,000 corresponding to last four instalments of the termination agreement.
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 members of the Chamber 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 240,000.
17. In addition, taking into consideration the Claimant's request as well as the acceleration clause provided for in clause 4 of the termination agreement, the members of the Chamber decided to award the Claimant 5% interest *p.a.* on the amount of EUR 240,000 as from 26 July 2018 until the date of effective payment.
18. In continuation, taking into account the consideration under number II./15. above, the Chamber 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 it has competence to impose sanctions on the Respondent. Therefore, 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.
21. Furthermore, taking into account the consideration under number II./3. above, the Chamber 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.
22. In this regard, the DRC 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.
23. Therefore, bearing in mind the above, the DRC decided that, in the event that the Respondent does not pay the amount 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.

24. Finally, the DRC 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 Dispute Resolution Chamber

1. The claim of the Claimant, Player A, is accepted.
2. The Respondent, Club C, has to pay to the Claimant the amount of EUR 240,000 as overdue payables, plus 5% interest *p.a.* as from 26 July 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 postal address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amounts mentioned under point III./2. above.
5. The Respondent shall provide evidence of payment of the due amount in accordance with point III./2. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated into one of the official FIFA languages (English, French, German, Spanish).
6. In the event that the amount plus interest due 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 amounts are 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
Avenue de Beaumont 2
1012 Lausanne
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Encl: CAS directives