

Decision of the Dispute Resolution Chamber (DRC) judge

passed on 12 August 2019,

by **Philippe Diallo** (France), 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 1 February 2018, 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 31 May 2018.
2. In accordance with clause 7 of the employment contract, the Respondent undertook to pay to the Claimant a monthly salary "*in the amount of 5747 U.E. [unit of exchange] payment perform in U.E. equal to the USA dollars in Currency of Country D at the rate for last day account month of the Central Bank of Country D*". In reference to the aforementioned salary, the contract further included the following provision: "*[A]ppointed above Football player labour cost amount include under Football player (tax payer) payment all Club (as fiscal agent) charges, calculation, deduction and transfer to the Country D budget system according to present legislation*".
3. According to the Claimant, on 1 February 2018, the parties allegedly signed an addendum to the contract titled "*Attachment 1 to the Contract*" (hereinafter: *the alleged addendum to the contract*), by means of which the Claimant was allegedly entitled to receive from the Respondent an additional monthly remuneration of USD 12,500 "*net*".
4. By correspondence dated 15 June 2018, the Claimant put the Respondent in default of payment of i) "*11,300 U.E. equal to the USA dollars in Currency of Country D at the rate for last day account month of the Central Bank of Country D*", corresponding to part of his monthly salary of March 2018 and two monthly salaries for the months of April and May 2018 and ii) USD 42,500, corresponding to a "*bonus match*" of USD 5,000 and three additional monthly salaries of USD 12,500 each for the months of March, April and May 2018 as provided in the alleged addendum to the contract, setting a 10 days' time limit in order to remedy the default.
5. On 15 May 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 "*net*" amount of USD 48,800 corresponding to i) part of his monthly salary for the month of March 2018 (USD 1,300) and two monthly salaries of USD 5,000 each for the months of April and May 2018 as stipulated in the contract and ii) three additional monthly salaries of USD 12,500 each, as stipulated in the alleged addendum to the contract.
6. The Claimant further asks to be awarded interest of 5% p.a. "*since the moment when the above payments become outstanding*".
7. In his claim, the Claimant explained that, allegedly, the parties agreed that the monthly salary would be USD 17,500, *i.e.* USD 5,000 net in accordance with the contract and USD 12,500 in accordance with the alleged addendum. Furthermore, the claimant held that he never received a copy of the addendum to the contract "*throughout the whole period of Contract*".
8. 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 15 May 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 15 May 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 were bound by an employment contract, valid as from 1 February 2018 until 31 May 2018, in accordance with which the Claimant was entitled to receive a gross monthly salary "*in the amount of 5747 U.E. [unit of exchange] payment perform in U.E. equal to the USA dollars in Currency of Country D at the rate for last day account month of the Central Bank of Country D*". In the absence of a clear contractual clause with respect to the due date of payment, and in line with the jurisprudence of the Dispute Resolution Chamber, the DRC judge considered that the due date of payment of the Claimant's salary was on the last day of the month during which the Claimant rendered his services.

6. Furthermore, the DRC judge took note that according to the Claimant, on 1 February 2018, the parties allegedly signed an addendum to the contract titled "*Attachment 1 to the Contract*", by means of which the Claimant was allegedly entitled to receive from the Respondent an additional monthly remuneration of USD 12,500 "*net*".
7. In continuation, the DRC Judge observed that the Claimant did not provide a copy of the alleged addendum to the contract.
8. 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 48,800 corresponding to i) part of his monthly salary for the month of March 2018 (USD 1,300) and two monthly salaries of USD 5,000 each for the months of April and May 2018 as stipulated in the contract and ii) three additional monthly salaries of USD 12,500 each, as stipulated in the alleged addendum to the contract.
9. In this context, the DRC judge took particular note of the fact that, on 15 June 2018, the Claimant put the Respondent in default of payment of i) "*11,300 U.E. equal to the USA dollars in Currency of Country D at the rate for last day account month of the Central Bank of Country D*", corresponding to part of his monthly salary of March 2018 and two monthly salaries for the months of April and May 2018 and ii) USD 42,500, corresponding to a "*bonus match*" of USD 5,000 and three additional monthly salaries of USD 12,500 each for the months of March, April and May 2018 as provided in the alleged addendum to the contract, setting a 10 days' time limit in order to remedy the default.
10. 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).
11. 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.
12. 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.
13. 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 a gross monthly salary "*in the amount of 5747 U.E. [unit of exchange] payment perform in U.E. equal to the USA dollars in Currency of Country D at the rate for last day account month of the Central Bank of Country D*".

14. In continuation, the DRC judge referred to art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. The application of the said principle in the present matter led the DRC judge to conclude that it was up to the Claimant to prove that the alleged addendum to the contract, on the basis of which he also claims overdue payables from the Respondent, indeed existed.
15. In this context, the DRC judge recalled that the Claimant maintained that he never received a copy of the alleged addendum to the contract he asserted having signed with the Respondent. Furthermore, the DRC judge observed that the Claimant failed to provide any other conclusive proof of evidence regarding its existence and pointed out that such document is not available in the TMS.
16. As a consequence, the DRC judge decided that, since the Claimant had not been able to prove beyond doubt that an addendum to the contract had validly been concluded between himself and the Respondent, the Claimant's claim related to the alleged addendum to the contract has to be rejected.
17. Taking into account the documentation presented by the Claimant in support of his petition, the DRC judge concluded that the Claimant had partially substantiated his claim pertaining to overdue payables with sufficient documentary evidence.
18. 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 11,300, corresponding to part of his monthly salary for the month of March 2018 (USD 1,300) and two monthly salaries of USD 5,000 each for the months of April and May 2018 as stipulated in the contract.
19. In addition, bearing in mind the considerations under numbers II./9. and II./10. above the DRC judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
20. 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 the total amount of USD 11,300.
21. In this context and for the sake of good order, the DRC judge highlighted that in light of the prerequisites set out in art. 12bis par. 3 of the Regulations, only the outstanding amount of USD 6,300 in connection with the Claimant's claim related to his salaries that fell due up to and including the salary for April 2018 is considered to fall within the scope of art. 12bis of the Regulations.
22. 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 USD 1,300 as from 1 April

2018, on the amount of USD 5,000 as from 1 May 2018, and on the amount of USD 5,000 as from 1 June 2018 until the date of effective payment.

23. In continuation, taking into account the consideration under number II./19. 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.
24. The DRC judge established that in virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. In this context, the DRC judge highlighted that, on 9 October 2018, the Respondent had already been found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis, as a result of which a warning had been imposed on the Respondent by the DRC judge.
25. Moreover, the DRC judge referred to art. 12bis par. 6 of the Regulations, which establishes that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty.
26. Bearing in mind the above, the DRC judge decided to impose a reprimand on the Respondent in accordance with art. 12bis par. 4 lit. b) of the Regulations.
27. 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.
28. 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.
29. 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.
30. 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 partially accepted.
2. The Respondent, Club C, has to pay to the Claimant the amount of USD 11,300 plus 5% interest *p.a.* as follows:
 - a. on the amount of USD 1,300 as from 1 April 2018 until the date of effective payment;
 - b. on the amount of USD 5,000 as from 1 May 2018 until the date of effective payment;
 - c. on the amount of USD 5,000 as from 1 June 2018 until the date of effective payment.
3. Any further request filed by the Claimant is rejected.
4. A reprimand 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 III./2. above.
6. 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).
7. 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).
8. The ban mentioned in point III./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.

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