

# Decision of the Dispute Resolution Chamber (DRC) judge

passed on 15 October 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. 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 for the "season 2018.2019". According to the information available on the Transfer Matching System (TMS), the relevant season ran from June 2018 to May 2019.
2. In accordance with the employment contract, the Respondent undertook to pay to the Claimant:
  - an "advance payment" of EUR 100,000 payable on 20 August 2018; and
  - a monthly remuneration of EUR 19,000 payable "at the last day of every month" from August 2018 until May 2019.
3. By correspondence dated 11 June 2019, the Claimant put the Respondent in default of payment of EUR 68,500, corresponding to "overdue salaries", setting a 10 days' time limit in order to remedy the default.
4. On 24 July 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 68,500 corresponding to the value of said overdue salaries. The Claimant further asks to be awarded interest of 5% interest p.a. as from 31 May 2019.
5. 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 24 July 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 24 July 2019, the 2019

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 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 it 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 for the "*season 2018.2019*", in accordance with which the Claimant was entitled to receive from the Respondent, *inter alia*, an advance payment of EUR 100,000 by no later than 20 August 2018 as well as a monthly remuneration of EUR 19,000 payable at the last day of each month from August 2018 until May 2019. In this respect, the DRC judge noted that, according to the information contained in TMS, the relevant sporting season ran from June 2018 until May 2019.
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 68,500 corresponding to "*overdue salaries*", without specifying the exact months claimed.
7. In this context, the DRC judge took particular note of the fact that, on 11 June 2019, the Claimant put the Respondent in default of payment of EUR 68,500, setting a time limit expiring on 21 June 2019 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. 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.
12. On account of the aforementioned considerations, the Chamber judge established that the Respondent failed to remit to the Claimant the total amount of EUR 68,500.
13. In addition, the DRC established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
14. 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 68,500.
15. 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 EUR 49,500 in connection with the Claimant's claim relating to "*overdue salaries*" is considered to fall within the scope of art. 12bis of the Regulations.
16. In this respect, considering that the Claimant did not specify to which months the overdue amounts pertained, the DRC judge considered that the amount of EUR 19,000 should be allocated to the month of May 2019. Consequently, the payment of said amount had not been delayed for more than 30 days at the moment that the Claimant sent his default notice on 11 June 2019. Consequently, the DRC judge decided that said instalment does not fall within the scope of art. 12bis of the Regulations.
17. In addition, taking into consideration the Claimant's request, the members of the DRC judge decided to award the Claimant 5% interest *p.a.* on the amount of EUR 68,500 as from 1 June 2019 until the date of effective payment.
18. In continuation, taking into account the consideration under number II./13. 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.
19. 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 several occasions within the past 2 years 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, on, 2 October 2019, a fine had been imposed on the Respondent by the Dispute Resolution Chamber.

20. 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.
21. Bearing in mind the above and taking into account art. 12bis par. 5 of the Regulations, according to which sanctions provided for in par. 4 of art. 12bis may be applied cumulatively, the DRC judge decided to impose a warning as well as a proportionally more severe fine on the Respondent in accordance with art. 12bis par. 4 lit. a) and lit. c) of the Regulations, respectively. On account of the above, taking into account the considerations under number II./15. and II./16. above as well as the overdue payables amounting to EUR 49,500, the DRC judge regarded a fine amounting to CHF 11,250 as appropriate and hence decided to impose said fine on the Respondent.
22. 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.
23. 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.
24. Therefore, bearing in mind the above, the DRC judge 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.
25. 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.

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### 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 68,500 as overdue payables, plus 5% interest *p.a.* as from 1 June 2019 until the date of effective payment.
3. Any further claim lodged by the Claimant is rejected.
4. A warning is imposed on the Respondent.
5. The Respondent is ordered to pay a fine in the amount of CHF 11,250. The fine is to be paid **within 45 days** of notification of the present decision, **to FIFA** to the following bank account with reference to case nr. XX-XXXXX/XXX

UBS Zurich  
Account number 366.677.01U (FIFA Players' Status)  
Clearing number 230  
IBAN: CH27 0023 0230 3666 7701U  
SWIFT: UBSWCHZH80A

6. 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 amount mentioned under point III./2. above.
7. 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](mailto:psdfifa@fifa.org), duly translated into one of the official FIFA languages (English, French, German, Spanish).
8. 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).

9. The ban mentioned in point III./8. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.
  
10. 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  
Switzerland  
Tel: +41 21 613 50 00  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
[www.tas-cas.org](http://www.tas-cas.org)

For the DRC judge:

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Emilio García Silvero  
Chief Legal & Compliance Officer

Encl: CAS directives