Decision of the Dispute Resolution Chamber

passed via videoconference, on 18 June 2020,

regarding an employment-related dispute concerning the player Luiz Carlos Martins Moreira

COMPOSITION:

Geoff Thompson (England), Chairman
Mohamed Muzammil (Singapore), member
Stefano Sartori (Italy), member

CLAIMANT:

Luiz Carlos Martins Moreira, Brazil
Represented by Mr Pedro Macieirinha

RESPONDENT:

Al-Ahli Saudi Football Club, Saudi Arabia

I. FACTS OF THE CASE

1. On 16 July 2016, the Brazilian player, Luiz Carlos Martín Moreira, (hereinafter: *the player or Claimant*), and the Saudi Arabian club, Al-Ahli Saudi Fooball Club, (hereinafter: *the club or Respondent*) concluded an employment contract valid as from 1 July 2016 until 30 June 2017 (hereinafter: *the contract*).

2. According to the contract, the player was entitled to a basic annual salary in the amount of USD 2,166,666, payable as follows :

   i. USD 666,666, payable as *"advance payment"* in two instalments of USD 333,333 each, to be paid, respectively, at the date of signature and on 10 January 2017;
   ii. USD 1,500,000, payable in 12 monthly instalments of USD 125,000 *"within the first seven consecutive days of every month (…) from July 2016 to June 2017."*

3. In addition, clause 6 of the contract stipulated the following: "*The party terminating the contract with no just cause shall pay the other party a penalty equivalent of 40% of the remainder of the contract*".

4. On 2 March 2017, the player lodged a first claim before FIFA against the club for breach of contract without just cause, and requested the payment of the total amount of USD 1,266,666.20 "*more interests since the date of the contract breach*", composed as follows:

   i. USD 333,333, corresponding to the second instalment of the *"advance payment*", due on 10 January 2017;
   ii. USD 750,000, corresponding to *"outstanding salaries"* for the period comprised between January 2017 and June 2017 (*i.e.* 125,000*6);
   iii. USD 433,333, corresponding to 40% of the residual value of the contract (*i.e.* 40% of 333,333+750,000), in application of clause 6 of the contract;
   iv. *Minus* USD 250,000 as "*the amount already paid by the club*".

5. In addition, the player requested the imposition of sporting sanctions against the club.

6. According to the player, on 9 January 2017, the club notified him by letter of the following: *"Further to board of directors meeting of 09/01/2017, I regretfully confirm that your employment with Al Ahli Saudi FC is terminated with immediate effect. We will provide you a penalty equivalent to 40% of the remainder of the contract and all due salaries".*

7. In reply to the claim, the club acknowledged that it terminated the contract unilaterally on 9 January 2017. In this respect, the club acknowledged that the residual value of the contract amounted to USD 1,083,333 (i.e. USD 333,333 + 125,000*6) and consequently, accepted to pay the amount of USD 433,333.20 to the claimant in application of clause 6 of the contract, as a result of the following calculation: USD (333,333+750,000)*40%=433,333.20.

8. Moreover, after being invited by FIFA to do so, the player stated that, on 26 January 2017, he concluded an employment contract with the Turkish club, Osmanlispor. In accordance with said contract, the player was entitled to receive the amount of EUR 175,000 from February 2017 until June 2017.

9. On 15 February 2018, the FIFA Dispute Resolution Chamber decided that the player was entitled to receive from the club, as compensation for breach of contract, in the amount of USD 433,333.20, plus 5% interest *p.a.* as from 2 March 2017 until the date of effective payment.

10. On 21 June 2018, the player lodged a second claim against the club in front of FIFA, requesting the following:

    i. USD 125,000 as the salary for the month of December 2016;
    ii. USD 37,500 as the salary for 9 days of January 2017.

11. The player further requested to be awarded interests on both amounts as from the due dates, *i.e.* December 2016 and the contract termination (9 January 2017).

12. In his claim, the player referred to his previous claim reminding that he requested FIFA to *"(…) determine that the club terminated the Employment Contract without just cause, according to the clause 6 of the Employment contract"*.

13. Moreover, the player further held that, in his previous claim, he had *"also requested the FIFA DRC to determine the payment of 1.266.666,20 USD net, as unpaid second instalment of the advance payment, as unpaid wages corresponding to the months of January, February, March, April, May and June 2017, plus 40% of the remainder of the contract as compensation for the termination without just cause, by the Respondent to the Claimant, as responsibility of the club arising to the termination, by the club respondent, of the Employment Contract, without just cause, signed by the parties, more interests since the contract termination until full payment, according to the FIFA Statutes and regulations, taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity for sport, under penalty of imposition of disciplinary measures to the Respondent if the above obligation is not observed"*.

14. In continuation, the player sustained that: *"It happens that the petition contained a material lapse, as the claimant didn't asked, in that petition, the payment regarding the month of December.2016, and regarding the salary corresponding to the first 9 days of January.2017"*.

15. In respect to the above, the player explained that, in accordance with the bank documents he had in his possession, *"the player received the first salary in October.2016 referring to the month of July.2016, and then, in January 2017, he received the salaries of August, September, October and November of 2016"*.

16. As such, the player underlined that he had not been paid his salary of December 2016 and of the first 9 days of January 2017.

17. In its reply to the claim, the club first sustained that more than 2 years had passed since the salary of December 2016 and January 2017 were due, therefore the claim should be declared time-barred.

18. Moreover, the club pointed out that, on 15 February 2018, the FIFA Dispute Resolution Chamber rendered a decision in relation to the case at stake. Therefore, the club deemed that FIFA is not in a position to deal with the present dispute.

19. As a consequence, the club requested FIFA to decide the following: i) Failure to comply with the formalities of the request in accordance with art. 9 of the Rules Governing the Procedures of the PSC and the DRC; ii) Prescription of the Claimant's claim in accordance with art. 25, par. 5 of the Regulations on the Status and Transfer of Players, and; iii) The case should be declared *res judicata* since the deadline for appealing the decision rendered by the DRC on 15 February 2018 has expired.

II. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

1. First of all, the Dispute Resolution Chamber (hereinafter: *the Chamber or DRC*) analysed whether it was competent to deal with the matter at stake. In this respect, the DRC took note that the present matter was submitted to FIFA on 21 June 2018. Taking into account the wording of art. 21 of the 2018 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

2. Subsequently, the DRC referred to art. 3 par. 1 of the Procedural Rules and confirmed that, in accordance with art. 24 par. 1 and 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players, the DRC is, in principle, competent to deal with the matter at stake, which concerns an employment–related dispute with an international dimension between a Brazilian player and a Saudi Arabian club.

3. At this point the DRC noted that the Respondent objected to the admissibility of the present claim, alleging that a dispute between the parties had already been decided upon by the FIFA DRC on 15 February 2018 in relation to the case at stake, and as such, that the Dispute Resolution Chamber has no competence to deal with the claim at stake by virtue of the application of the legal principle of *res iudicata.*

4. In continuation, in light of the consideration under point II./3. above, the DRC held that it had to establish whether, considering the general principle of *res iudicata*, it could enter into the substance of the matter and pass a decision.

5. Accordingly, the Chamber deemed it appropriate to briefly recall that on the basis of the principle of *res iudicata*, a decision-making body is not in a position to deal with the substance of a case in the event that another or the same deciding body has already dealt with the same matter by

passing a final and binding decision. Indeed, the parties to the dispute as well as the deciding authority are bound by the final and binding decision previously passed.

6. In continuation, the DRC noted that the Claimant had acknowledged having lodged a first claim against the Respondent in front of FIFA on 2 March 2017 and that said claim "(…) *contained a material lapse, as the claimant didn't asked, in that petition, the payment regarding the month of December.2016, and regarding the salary corresponding to the first 9 days of January.2017*". As such, the DRC took note of the fact that the Claimant lodged the present claim as a consequence thereof.

7. Consequently, the majority of the DRC was satisfied that the decision of the Chamber rendered on 15 February 2018 was final and binding, which is one of the criteria in order to establish as to whether the principle of *res iudicata* is applicable.

8. Furthermore, the DRC underlined that the principle of *res iudicata* is applicable if cumulatively and necessarily the parties to the disputes and the object of the matter in dispute are identical.

9. In this respect, the DRC recalled that the criterion of the identity of the parties is given if the parties to the disputes are the same. Having said this, the DRC noted that both the Claimant and the Respondent were the parties in the proceedings leading to the decision rendered on 15 February 2018 as well as in the dispute at stake.

10. As a consequence, considering that the parties to both disputes are the same, the majority of the DRC came to the conclusion that the condition of the identity of parties is fulfilled.

11. The DRC then turned its attention to the criterion of the object of the matter in dispute.

12. In this respect, the DRC started by acknowledging that the identity of the subject matter is fulfilled if the requests of the two claims are similar.

13. In view of the foregoing, the DRC went on analysing and comparing the requests made, *i.e.*, the claim of the Claimant against the Respondent in front of the DRC on 2 March 2017, and the Claimant's claim against the Respondent before the DRC on 21 June 2018.

14. From the information and documentation on file, the DRC could verify that the Claimant had acknowledged in the present claim, that his previous claim "*contained a material lapse, as* [he] *didn't asked, in that petition, the payment regarding the month of December 2016, and regarding the salary corresponding to the first 9 days of January 2017*". As such, the DRC understood that, in the Claimant's opinion, said request had not been part of his claim of 2 March 2017, which eventually led to the decision rendered by the DRC on 15 February 2018.

15. In this respect, the DRC recalled that, in the Claimant's opinion, he received the salary of July 2016 only in October 2016 and the salaries as from August until November 2016 only in January 2017. As such, the Claimant deemed that he had not been paid his salary of December 2016 and of the first 9 days of January 2017, object of the claim at stake.

16. As such, bearing in mind the above, the majority of the DRC referred once again to the aforementioned principle of *res judicata*, according to which a decision-making body is not in a position to deal with a claim in the event that a deciding body has already dealt with the exact same matter and already passed a final and binding decision in said matter.

17. In addition, the majority of the DRC deemed that, in accordance with longstanding jurisprudence of the Swiss Federal Tribunal, "*the res judicata effect extends to all the facts existing at the time of the first decision, whether or not they were known to the parties, stated by them, or considered as proof by the first* [decision-making body]."

18. As a consequence, in view of the aforementioned, the majority of the DRC held that both legal actions were based on the same employment contract and that both claims were aimed at establishing the Respondent's liability. In addition, the majority of the DRC referred to the abovementioned jurisprudence of the Swiss Federal Tribunal and concluded that the Claimant should have included his request in the matter at stake in his initial claim of March 2017.

19. On account of the above, the majority of the Chamber determined that the object of the matter in both disputes is identical and that, therefore, the condition of identity of the object of the matter in dispute is also fulfilled.

20. Consequently, the majority of the Chamber concluded that, when compared to the legal action in front of the DRC in March 2017, the matter at hand not only concerns identical parties to the dispute but also identical objects of the matter in dispute and therefore, has to be considered as a *res iudicata*.

21. In light of the above, the majority of the Chamber decided that in accordance with the general legal principle of *res iudicata* it is not in a position to deal again with the substance of the present matter.

III. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, Luiz Carlos Martins Moreira, is inadmissible.

For the Dispute Resolution Chamber:

Emilio García Silvero
Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Procedural Rules).

CONTACT INFORMATION:

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777