

Decision of the Dispute Resolution Chamber

passed on 13 October 2021

regarding an employment-related dispute concerning the player A

BY:

Mario Flores Chemor (Mexico)

CLAIMANT:

Player A, Country A
Represented by XXX

RESPONDENT:

Club B, Country B
Represented by XXX

I. Facts of the case

1. On 12 January 2021, the Country A player, Player A (hereinafter: *the player* or *the Claimant*) received an employment offer from the Country B club, Club B (hereinafter: *the club* or *the Respondent*) providing for, *inter alia*, the following conditions (hereinafter: *the employment offer*):
 - a. Duration: from 31 January 2021 until 30 April 2021;
 - b. Remuneration: EUR 6,000 net, being EUR 2,000 net per month;
 - c. "*One ticket for the player*";
 - d. Accommodation: three monthly instalments of EUR 100;
 - e. Car: three monthly instalments of EUR 200;
 - f. Bonus: EUR 2,000 if the club is promoted to the 1st division; and
 - g. "*If the championship is extended on May 2021 one salary more*".
2. The abovementioned conditions were discussed by the player and a club's representative via WhatsApp. In addition, the document comprising the employment offer was signed by the club and countersigned by the player.
3. On 29 January 2021, the player and the club signed an employment contract valid as from the date of signature until 30 April 2021 (hereinafter: *the employment contract*).
4. In accordance with clause 1.3 of the employment contract, the club undertook to pay the player a monthly remuneration of EUR 200 net.
5. Clauses 2.1 and 2.2 of the employment contract stipulated the following:

"2.1. The present Contract is regulated by the provisions of the Standard Employment Contract, as these have been agreed between the Country B Football Association and the Country B Footballers' Union and as these provisions have been codified in Annex 1 of the Country B Football Association Registration and Transfer of Players Regulations.

2.2. The terms of the Standard Employment Contract constitute an integral part of the present Contract having full and direct implementation".
6. Additionally, clause 14.3 of the Annex 1 to the employment contract (i.e. the Standard Employment Contract) read as follows: "*This Contract and the Player's Employment Agreement constitute the entire agreement between the Club and the player and supersede any and all preceding agreements between the Club and the Player regarding the employment period mentioned in clause 1 of the Players' Employment Agreement*".
7. On the same date, i.e. 29 January 2021, the parties allegedly signed an image rights contract (hereinafter: *the image rights contract*), by means of which the club undertook to pay the

player an additional monthly remuneration of EUR 1,800 net, as well as the following benefits:

- a. *"One ticket for the player"*;
 - b. Accommodation: three monthly instalments of EUR 100;
 - c. Car: three monthly instalments of EUR 200;
 - d. Bonus: EUR 2,000 if the club is promoted to the 1st division; and
 - e. *"If the championship is extended on May 2021 one salary more"*.
8. A copy of the image rights contract was provided by the player without it being countersigned by the club.
 9. On an unspecified date, the club supposedly requested the player to sign a document dated 30 April 2021, which stipulated that he would continue to train and play by the club during the extended period of May 2021, *"without demanding compensation"*. The document was not signed by the player.
 10. On 3 May 2021, the player put the club in default and granted it a 10-day deadline in order to proceed with the payment of EUR 6,900 net, corresponding to the salaries, car and accommodation allowances for the months of February, March and April 2021.
 11. On 8 and 15 May 2021, the club played two matches in the 2nd division of the national championship, respectively against Club C and Club D.
 12. On 17 June 2021, the player put the club in default and granted it with a further 10 days in order to proceed with the payment of EUR 9,200 net, corresponding to the salaries, car and accommodation allowances for the months of February, March, April and May 2021.
 13. On 18 June 2021, the club's representative, Mr XXX (hereinafter: *the club's representative*), replied to the player's notice informing that he was taking over the administration of the club, as well as requesting a copy of the relevant agreements concluded to assess the debt towards the player.
 14. On the same date, the player's representative reiterated his requests and mentioned that if the club's representative was indeed taking over the administration of the club, he should have access to the relevant documentation.
 15. On 13 July 2021, the player travelled from City B, Country B to City A, Country A. The flight ticket costed EUR 137, being EUR 122 as the ticket price and EUR 15 as luggage costs.

II. Proceedings before FIFA

16. On 16 July 2021, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed herein below.

a. Claim of the player

17. According to the player, the club divided his remuneration in two parts *i.e.* a minor part included in the employment contract and the remaining included in the image rights contract. In this regard, the player stated that the club acted in bad faith by not providing him with a signed copy of the image rights contract, as well as that such document “*contains the exact same benefits in favour of the player as those contained in [the employment offer]*”. Consequently, the player submitted that the image rights contract was a part of the employment relationship and, thus, should be deemed as binding.
18. Subsequently, the player maintained that the employment relationship with the club was extended for the month of May 2021 and submitted evidence that the club played two matches during this period: on 8 and 15 May 2021. As such, the player claimed that he should also be entitled to an additional monthly salary of EUR 2,000 net, plus car and housing allowance, as described in the employment offer and in the image rights contract.
19. Finally, the player recalled the content of art. 12bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) and requested to be awarded the outstanding remuneration amounting to EUR 9,200 net (*i.e.* salaries, car and housing allowances from February to May 2021), plus 5% interest as from the due dates. At the end, the player held that sporting sanctions should be imposed on the club.

b. Reply of the club

20. First and foremost, the club pointed out that “*no image rights has ever been agreed and signed [...] because the player did not disclose his previous medical condition and when being under the relevant medical examinations and checks the club noticed the player's previous medical condition and status had not been disclosed. Instead of revoking the relevant offer the parties decided and agreed to sign only the contract of employment so as to give the player the opportunity either to restore and regain his medical status and condition or to be able to find a new employer and conclude a transfer*”.
21. Therefore, the club claimed that the Dispute Resolution Chamber does not have jurisdiction to adjudicate on the “*not signed and enforced*” image rights contract – which was allegedly never concluded between the parties.
22. As to the substance, the club remarked that the image rights contract could not be enforced in any scenario. In addition, the club stated that there was no employment relationship between the parties and, hence, that the player's claim should be rejected

c. Rejoinder of the player

23. In his rejoinder, the player contested the club's allegations as to the admissibility of the claim. In particular, the player pointed out that the club was acting in bad faith by disputing the signature of the image rights contract.
24. In support of his argumentation, the player remarked that the image rights contract contained the exact same benefits mentioned in the employment offer, as well as that it had the same duration of the employment contract. In doing so, the player once again concluded that the image rights contract was *"meant to be an integral part of the actual employment relationship, in the sense that it was directly linked to the services of the player as an employee of the club"*.
25. Consequently, the player claimed that FIFA was competent to hear the entire dispute.
26. In continuation, the player argued that the club contradicted itself by firstly acknowledging that the employment contract was concluded between the parties, and then arguing that there was not an employment relationship between them.
27. In this context, the player recalled the content of the employment offer and maintained that it would not make sense for him to leave his previous work and initiate an employment relationship with the club for such an irrelevant amount as the one described in the employment contract. What is more, the player informed that the remuneration therein prescribed was even lower than the Country B minimum wage, amounting to EUR 870 per month.
28. As to the medical condition invoked by the club in its statement of defence, the player claimed that if the club had doubts about his health, it would have decided not to sign him at all. Thus, the player mentioned that not only he performed his services for the duration of the employment contract, but that said term was fully extended by the parties until the end of May 2021.
29. Finally, the player explained that he bought his own flight ticket to return to his home country on 13 June 2021. Such ticket should thus be reimbursed as contractually agreed. Accordingly, the player recalled his requests for relief as to the outstanding remuneration and amended his claim in order to request an additional amount of EUR 137, corresponding to the flight expenses (*i.e.* EUR 122 as the ticket price and EUR 15 as luggage costs).

d. Final comments of the club

30. In its final comments, the club reiterated its own argumentation as to the admissibility of the claim and the non-execution of the image rights contract.
31. In particular, the club informed that the player arrived with a *"diminished reputation"* and only played 3 games in the national league. Moreover, it underlined that *"the DRC does not*

have jurisdiction to adjudicate about the alleged not signed and enforced image agreement which is not attached by the Claimant".

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

32. First of all, the Single Judge of the Dispute Resolution Chamber (hereinafter also referred to as *Single Judge*) analysed whether he was competent to deal with the case at hand. Taking into account the wording of art. 31 par. 1 in combination with art. 34 of the October 2021 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: the *Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
33. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (August 2021 edition), he is, in principle, competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Country A player and a Country B club. Likewise, and while referring to art. 24 par. 1 lit. a) of the Procedural Rules, the Single Judge pointed out that he is competent to adjudicate on the player's claim given that the amount in dispute is lower than USD 200,000.
34. The above notwithstanding, the Single Judge acknowledged that the club challenged FIFA's competence to adjudicate on image rights agreements, such as the image rights contract filed by the player.
35. In this context, the Single Judge firstly wished to recall that, in principle, FIFA is not competent to decide on agreements which subject-matter is the license of image rights, as those are not employment-related agreements. However, in line with the DRC's long-standing jurisprudence, such conclusion might be different if specific elements of the alleged image rights agreement suggest that it was in fact meant to be part of the actual employment relationship.
36. *In casu*, the Single Judge was of the position that such elements clearly exist. In particular, he noted that the image rights contract contains, *inter alia*, stipulations regarding bonuses related to the performance of the team, accommodation and the use of a car – which are typically included in employment contracts and not in image rights agreements, since they do not pertain to the use of a player's image, name, likeness, etc. but in fact are related to the performance of the player as a footballer. Furthermore, the Single Judge was also cognisant that the image rights contract was concluded on the same date as the employment contract and for the exact same duration – even including the possibility of an extension following the duration of the national championship.

37. Consequently, in line with the well-established jurisprudence of the Dispute Resolution Chamber, the Single Judge deemed that the image rights contract should be considered as an integral part of the employment relationship between the player and the club.
38. For the sake of good order, the Single Judge is aware that the club disputes that the image rights contract was ever concluded between the parties based, *inter alia*, on the lack of its signature and in the player's medical condition. Nevertheless, the Single Judge considered that said opposition relates to the substance of the matter and will be thus analysed further below.
39. Therefore, the Single Judge decided that he is competent to hear the entire dispute at stake.
40. Finally, the Single 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 2 of the Regulations on the Status and Transfer of Players (August 2021 edition), and considering that the present claim was lodged on 16 July 2021, the February 2021 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

41. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party that asserts a fact has the burden of proving it.

c. Merits of the dispute

42. His competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single 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.

i. Main legal discussion and considerations

43. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that this case pertains to a claim for outstanding remuneration only, lodged by the player against the club in connection with the employment relationship previously existing between them.
44. In this context, the Single Judge observed that it remained undisputed that the employment contract was indeed signed by the parties and, thus, that the player rendered his services to the club as a professional footballer. In this respect, the Single Judge noted that the club

suggested, in its statement of defence, that it did not have an employment relationship with the player, however he considered that this allegation was inconsistent by the fact that the club expressly confirmed that the employment contract was signed “so as to give the player the opportunity either to restore and regain his medical status and condition or to be able to find a new employer and conclude a transfer”.

45. In addition, the Single Judge was also mindful that the club did not contest its failure to comply with the financial obligations established in said contract. What is more, the Single Judge took due consideration of the fact that the club did not dispute either that its relationship with the player was extended until the end of May 2020 (and even provided a waiver supposedly delivered by the player but lacking his consent). Along these lines, the Single Judge considered that the player was able to prove that he continued rendering his services to the club during such month.
46. In view of the foregoing, the Single Judge held that the player was entitled to (at least) EUR 200 net per month – as stipulated in the employment contract – and that such remuneration was outstanding for the months of February, March, April and May 2021. Consequently, the Single Judge was firm to determine that the club should be liable to pay the player the total amount of EUR 800 net in accordance with the principle *pacta sunt servanda*.
47. Moreover, taking into consideration the player’s requests for relief as well as the constant practice of the Dispute Resolution Chamber in this regard, the Single Judge decided to award the player interest at the rate of 5% *p.a.* on the outstanding amounts as from the date in which each instalment fell due until the date of effective payment
48. Having established the above, the Single Judge went on analysing the parties’ submissions as to the image rights contract and observed that, as anticipated above, they strongly dispute whether the document was indeed concluded and the consequences that follow.
49. In this respect, the Single Judge firstly noted that the player, on his part, referred to the content of the employment offer previously received from the club and claimed that the exact benefits were provided for in the image rights contract. Additionally, the player held that the club unilaterally decided to divide his remuneration under two different agreements, as well that it refused to provide him a signed copy of the image rights contract. Finally, the player pointed out the insignificance of the remuneration established in the employment contract *vis-à-vis* the Country B minimum wage, as well as it made reference to the waiver that the club allegedly sent him in relation to the extended month of May 2020, in order to demonstrate its bad faith.
50. On the other hand, the Single Judge was also mindful that the club strongly disputed the signature of the image rights contract. In this respect, the club mentioned that, at the time of his arrival at the club, the player was facing medical difficulties, so that they mutually decided to depart from the execution of the image rights contract and instead only conclude the employment contract.

51. In view of this dissent between the parties, the Single Judge recalled the content of art. 13, par. 5 of the Procedural Rules and started his considerations by highlighting that the copy of the image rights contract filed by the player was not signed by the club. As such, in principle, it would seem that the player failed to prove that the parties entered into such contract.
52. Likewise, the Single Judge referred to clause 14.3 of the Annex 1 to the employment contract and pointed out that the employment contract would, *prima facie*, constitute the entire agreement between the parties – which would then supersede any agreement concluded by the parties by means of the employment offer.
53. The above notwithstanding, the Single Judge took due consideration of the club’s position explaining why the parties allegedly only concluded the employment contract substantially departing from the amounts due to the player initially agreed in the employment offer. In particular, the Single Judge noted that the club maintained that such reduction was because of the alleged “*medical status*” of the player.
54. The Single Judge was not persuaded by the club’s allegation. Indeed, not only the club did not present a single piece of evidence as regards the player’s “*medical status*”, but for the Single Judge it defies any logic that the player would have agreed to a EUR 2,000 monthly salary just to consent to a massive 90% reduction a few days later.
55. The Single Judge also found quite telling that if one takes the amounts established in the employment contract and those provided in the image rights contract, the added amount is exactly the same as the one initially agreed by the parties in the employment offer.
56. With all the above in mind, the Single Judge wished to refer to the principle of the primacy of reality, applicable in the majority, if not in all labour law systems, which dictates that facts must be given preference over what parties state in legal texts, documents, and agreements. Put differently, whenever the facts clearly contradict the parties’ statements in the documents at the basis of their relationship, the former shall prevail.
57. Along those lines, the Single Judge deemed that it was his task to analyse whether the factual framework of the case at stake, together with the evidence on file, could sufficiently justify the player’s claims as to the conclusion of the image rights contract – and consequently hold the club liable for the amounts requested by the player.
58. With all the above in mind, the Single Judge was comfortably satisfied that the player was able to demonstrate that the conditions established in the employment offer were, as a matter of fact, those finally agreed by the parties, irrespective of which amounts were actually inserted in the employment contract or the image rights contract.
59. Again, as mentioned before, the Single Judge considered unpersuasive the club’s argumentation for the massive discrepancy between the player’s salary provided in the

employment offer and that foreseen in the employment contract. In addition, the Single Judge emphasised that the conditions established in the employment offer were identical to the ones provided for in the employment contract and the image rights contract and, moreover, that said conditions were also discussed via WhatsApp between the player and a club's representative. In particular, the Single Judge highlighted that those conversations clearly established that the player would be entitled to a monthly remuneration of EUR 2,000 (*i.e.* the remuneration mentioned in the employment contract plus the remuneration mentioned in the image rights contract).

60. Although satisfied with the above line of reasoning, the Single Judge wished to also outline that in order for a contract to be considered as valid and binding, the signature of the parties is not the sole element to determine their consent. Instead, the validity and the enforcement of the contract should be established on the basis of a comprehensive understanding of all the facts and actions taken by the parties within the context of their relationship. Whatever the case may be, and for the reasons exhaustively set out above, the Single Judge considered as proven that the club effectively agree to pay to the player the remuneration provided in the employment offer.
61. Taking into account the abovementioned considerations, the Single Judge decided that the club should be liable to pay to the player the following amounts:
 - a. EUR 2,300 as the player's remuneration from February 2021;
 - b. EUR 2,300 as the player's remuneration from March 2021;
 - c. EUR 2,300 as the player's remuneration from April 2021; and
 - d. EUR 2,000 as the player's remuneration from May 2021, bearing in mind that according to the employment offer and the image rights contract, the player is only entitled to one extra "*salary*" for the extended month *i.e.* without the side benefits of accommodation and car.
62. At this point, the Single Judge once again referred to the constant practice of the Dispute Resolution Chamber and decided to award the player interest at the rate of 5% *p.a.* on the outstanding amounts as from the date in which each instalment fell due until the date of effective payment.
63. For the sake of completeness, the Single Judge highlighted that the player had also requested the reimbursement of a flight ticket to his home country under the wording of the image right contract and the employment offer. The Single Judge also noted that the player presented evidence of having purchased such flight ticket. In spite of not having further specifications in this regard, the Single Judge was of the opinion that the player's request was contractually based and was not disputed by the club. Thus, he decided that the

reimbursement should also be granted as claimed, accrued with 5% interest *p.a.* as from the date of the claim.

ii. Art. 12bis of the Regulations

64. In continuation, taking into account the applicable Regulations, the Single 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.
65. To this end, the Single Judge confirmed that the player put the club in default of payment of the amounts sought, which had fallen due for more than 30 days, and granted the club with 10 days to cure such breach of contract.
66. Accordingly, the Single Judge confirmed that the club had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
67. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the club. On account of the above and bearing in mind that this is the second offense by the club within the last two years, the Single Judge decided to impose a reprimand on the club in accordance with art. 12bis par. 4 lit. b) of the Regulations.
68. In this connection, the Single Judge highlighted 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.

iii. Compliance with monetary decisions

69. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24bis par. 1 and 2 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.
70. In this regard, the Single Judge highlighted 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. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
71. Therefore, bearing in mind the above, the Single Judge decided that the club must pay the full amount due (including all applicable interest) to the player within 45 days of notification

of the decision, failing which, at the request of the player, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24bis par. 2, 4, and 7 of the Regulations.

72. The club shall make full payment (including all applicable interest) to the bank account provided by the player in the Bank Account Registration Form, which is attached to the present decision.
73. The Single 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. 8 of the Regulations.

d. Costs

74. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
75. Likewise and for the sake of completeness, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
76. Lastly, the Single Judge concluded the deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player A, is admissible.
2. The claim of the Claimant is partially accepted.
3. The Respondent, Club B, has to pay to the Claimant, the following amounts:
 - EUR 2,300 as outstanding remuneration plus 5% interest *p.a.* as from 1 March 2021 until the date of effective payment;
 - EUR 2,300 as outstanding remuneration plus 5% interest *p.a.* as from 1 April 2021 until the date of effective payment;
 - EUR 2,300 as outstanding remuneration plus 5% interest *p.a.* as from 1 May 2021 until the date of effective payment;
 - EUR 2,000 as outstanding remuneration plus 5% interest *p.a.* as from 1 June 2021 until the date of effective payment; and
 - EUR 137 as outstanding amount plus 5% interest *p.a.* as from 16 July 2021 until the date of effective payment.
4. Any further claims of the Claimant are rejected.
5. A reprimand is imposed on the Respondent.
6. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.
7. Pursuant to art. 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration the ban shall be of three entire and consecutive registration periods.
 2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

8. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24bis par. 7 and 8 and art. 24ter of the Regulations on the Status and Transfer of Players.
9. This decision is rendered without costs.

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 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 17 of the Procedural Rules).

CONTACT INFORMATION

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