

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 2 November 2007,

in the following composition:

ALOULOU Slim (Tunisia), Chairman

DIDULICA John (Australia), member

MOVILLA Gerardo (Spain), member

MECHERARA Mohamed (Algeria), member

SALEH AL HOUSANI Essa M. (United Arab Emirates), member

on the claim presented by the player

Xxx, Xxx,

represented by Mr Xxx, Attorney at law,

as Claimant

against the club

Xxx, Xxx,

as Respondent

regarding a contractual dispute between the parties

I. Facts of the case

1. On 17 August 2005, the Xxx player, Xxx (hereinafter: the Claimant), and the Xxx club, Xxx (hereinafter: the Respondent), signed an employment contract valid from the day of the signature until 30 June 2008.
2. According to the relevant employment contract the Claimant was entitled to a monthly basic salary of EUR 660, Christmas allowance in the amount of EUR 660, Easter allowance in the amount of EUR 330, vacation allowance in the amount of EUR 330, benefits such as air fares and accommodation as well as further payments for signing the contract in the amount of EUR 260,000 payable in 2 instalments of EUR 25,000 and 7 instalments of EUR 30,000 each. The last instalment of every year, i.e., inter alia, the instalment payable on 12 December 2006, is subject to the condition that the Claimant completed 22 matches for the Respondent per year.
3. On 10 January 2007, the Claimant submitted a claim at FIFA against the Respondent for breach of contract. In this regard, the Claimant argued that the Respondent had imposed disciplinary measures on him, had failed to fulfil its financial obligations deriving from the relevant employment contract for more than 3 months, i.e. since the beginning of September 2006 and, finally, had unilaterally terminated the contractual relationship without just cause.
4. Therefore, the Claimant claimed allegedly outstanding remuneration in the total amount of EUR 24,989. In particular, he claimed the following payments:
 - Easter allowance 2006 in the amount of EUR 340
 - Christmas allowance 2006 in the amount of EUR 680
 - vacation allowance 2006 in the amount of EUR 340
 - salaries for July and November 2006 in the amount of EUR 680 each, i.e. overall the amount of EUR 1,360
 - share of the instalment of the further payments due on 12 December 2006 in the amount of EUR 20,000
 - salary increase in the amount of EUR 769
 - uncovered costs for rent in the amount of EUR 1,500
5. Furthermore, the Claimant claimed compensation in the amount of EUR 165,763 allegedly corresponding to the rest value of the contract. In particular, he claimed the following payments:
 - instalments of the further payments due on 10 April 2007, 31 May 2007, 12 December 2007, 10 April 2008 and 30 May 2008 in the amount of EUR 30,000 each, i.e. overall the amount of EUR 150,000
 - Easter allowance 2007 in the amount of EUR 384

- summer allowance 2007 in the amount of EUR 384
 - Christmas allowance 2007 in the amount of EUR 769
 - Easter allowance 2008 in the amount of EUR 384
 - salaries for the months of January 2007 until June 2008 in the amount of EUR 769 each, i.e. overall the amount of EUR 13,842
6. Altogether, the Claimant requested from the Respondent the payment of EUR 190,752 plus expenses allegedly incurred for flight tickets from Xxx to Xxx.
7. In its response, the Respondent, first and foremost, stated that FIFA should not consider the present matter, since it had already been dealt with as to the substance by the First Grade Committee for the Resolution of Financial Disputes of the Xxx Football Federation. In this regard, the Respondent argued that, on 29 December 2006, it had submitted a petition for execution of the termination of the relevant contract at the above-mentioned Committee of the Xxx Football Federation. Furthermore, the Respondent stated that, on 17 January 2007, the said Committee of the Xxx Football Federation had passed a decision not only with regard to the lawfulness of the termination of the relevant contract but also with regard to its competence to deal with the matter. The decision was in favour of the Claimant and stated in particular that the request of the Respondent for the termination of the contract with just cause had been rejected.
8. In this regard, the Respondent emphasised that, on 12 December 2006, it had decided to terminate the contractual relationship with the Claimant and, thus, to bring the affair before the First Grade Committee for the Resolution of Financial Disputes of the Xxx Football Federation due to the Claimant's poor performance, his unprofessional behaviour and, in particular, his refusal to accept its, the Respondent's, invitation of 4 December 2006 to terminate the contract by mutual agreement. In this respect, the Respondent affirmed that the Claimant refused to sign a termination agreement in accordance with the private agreement signed by and between them on 12 August 2005. This private agreement states that "*... Xxx ... during the contract of collaboration, that is from 17/08/2005 to 30/06/2008, has the right to breach the contract without the football player having any financial claim for the remaining instalments of the contract or for any other financial claim from it ...*".
9. With regard to the allegedly outstanding amounts the Respondent omitted to express itself.
10. In his replica, the Claimant argued that he refused to acknowledge the jurisdiction of both the First and the Second Grade Committee for the Resolution of Financial Disputes of the Xxx Football Federation. In this respect, the Claimant stated that the said deciding bodies of the Xxx Football Federation did not guarantee him impartiality and objectivity and, therefore, in the cause of justice, he was entitled to lodge a complaint against the Respondent at FIFA.

11. Furthermore, the Claimant argued that the private agreement dated 12 August 2005 was not valid and, consequently, not applicable to the matter at hand. In particular, the Claimant stressed that the said agreement provided the Respondent with the right to unilaterally terminate the employment contract without just cause and had been signed before the unconditioned conclusion of the relevant employment contract.
12. In its duplica, the Respondent provided FIFA with the decision dated 6 March 2007 passed by the Second Grade Committee for the Resolution of Financial Disputes of the Xxx Football Federation, in absence of the player, regarding its, the Respondent's, appeal against the decision of the First Grade Committee for the Resolution of Financial Disputes of the Xxx Football Federation.
13. Finally, the Xxx Football Federation informed FIFA that the First Grade Committee for the Resolution of Financial Disputes was equally composed of representatives of clubs and players and, therefore, it constituted a deciding body in line with the FIFA Regulations (cf. page 45 point 5. of the Statutes of the Xxx Football Federation). Furthermore, the Xxx Football Federation provided FIFA with an excerpt of its Statutes regarding the composition of the Appeals Arbitration Division of its Supreme Court of Arbitration (Second Grade Committee for the Resolution of Financial Disputes). In particular, the Xxx Football Federation provided FIFA with the pages 44 and 45 of its Statutes, which establish under point G. 1 that the Supreme Court of Arbitration comprises three members consisting of its president and two members, i.e. each one appointed by each party.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber had to analyze whether it was competent to deal with the matter at stake. In this respect, it referred to art. 18 par. 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. The present matter was submitted to FIFA on 10 January 2007, as a consequence the Chamber concluded that the revised Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2005, hereinafter: the Procedural Rules) to matters pending before the decision making bodies of FIFA are applicable to the matter at hand.
2. With regard to the competence of the Chamber, art. 3 par. 1 of the Procedural Rules states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of articles 22 to 24 of the 2005 edition of the Regulations for the Status and Transfer of Players. In accordance with art. 24 par. 1 in combination with art. 22 b) of the aforementioned Regulations, the Dispute Resolution Chamber shall

adjudicate on employment-related disputes between a club and a player that have an international dimension.

3. As a consequence, the Dispute Resolution Chamber would, in principle, be the competent body to decide on the present litigation involving a Xxx player and a Xxx club regarding the alleged breach of an employment contract.
4. However, the Chamber acknowledged that the Respondent contested the competence of FIFA to deal with the present matter due to the fact that the latter had already been dealt with as to the substance by the First and the Second Grade Committee for the Resolution of Financial Disputes of the Xxx Football Federation.
5. In this regard, the Chamber observed that the Claimant argued that the above-mentioned deciding bodies of the Xxx Football Federation did not guarantee him impartiality and objectivity, for which reason, he did not recognise their jurisdiction to deal with the matter at hand and, in the cause of justice, he was entitled to refer the matter to FIFA. In particular, the Chamber noted that the Claimant had not entered an appearance before the aforementioned First Grade Committee but had chosen to refer the matter to FIFA prior to the national body passing its decision. Equally, he had not accepted the jurisdiction of the relevant Second Grade Committee. In fact, the pertinent decision had been passed in absence of the Claimant.
6. Taking into account the above, the Chamber emphasised that in accordance with art. 22 b) of the 2005 edition of the Regulations for the Status and Transfer of Players it is competent to deal with a matter such as the one at hand unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the Association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the Chamber referred to FIFA Circular no. 1010 dated 20 December 2005.
7. In this respect, the Chamber acknowledged that, even though according to the documentation presented by the Xxx Football Federation it seems to appear that the relevant national deciding bodies may formally be composed of an equal number of player and club representatives, the Respondent was unable to prove that, in fact, the First and the Second Grade Committee for the Resolution of Financial Disputes of the Xxx Football Federation dealing with the present matter had met the minimum procedural standards for independent arbitration tribunals as laid down in art. 22 b) of the 2005 edition of the Regulations for the Status and Transfer of Players and in FIFA Circular no. 1010.

8. Furthermore, the Chamber was eager to emphasise that the employment contract at the basis of the present dispute does not contain any arbitration agreement in favour of national arbitration. Neither does it make explicit reference to any collective agreement or regulations that would provide for such an arbitration clause. Equally, the Chamber reiterated once again that the Claimant had not entered an appearance neither before the First Grade Committee nor the Second Grade Committee of the Xxx Football Federation. The Claimant explicitly contested the competence of the national bodies. As a result, and following a general legal principle of arbitration procedures, the Chamber concluded that without valid arbitration agreement, the competence of a specific arbitration body can *per se* not be established.
9. Consequently, taking into consideration the above circumstances, the Chamber concluded that the argument of the general legal principle of *res iudicata* invoked by the Respondent cannot be applied to the matter at hand.
10. In view of all the above, the Chamber established that the Respondent's objection to the competence of FIFA to deal with the present matter has to be rejected and that the Dispute Resolution Chamber is competent, on the basis of art. 22 b) of the 2005 edition of the Regulations for the Status and Transfer of Players, to consider the present matter as to the substance.
11. Subsequently, the members of the Chamber analyzed which edition of the Regulations for the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber referred, on the one hand, to art. 26 par. 1 and 2 of the 2005 edition of Regulations for the Status and Transfer of Players and, on the other hand, to the fact that the relevant employment contract at the basis of the present dispute was signed on 17 August 2005 and the claim was lodged at FIFA on 10 January 2007. In view of the aforementioned, the Chamber concluded that the 2005 edition of the Regulations for the Status and Transfers of Players (hereinafter: the Regulations) is applicable to the case at hand as to the substance.
12. In continuation, and entering into the substance of the matter, the Chamber acknowledged that, on 17 August 2005, the Claimant and the Respondent had signed an employment contract, valid from the day of the signature until 30 June 2008. In particular, the Chamber noted that according to the relevant employment contract the Claimant was entitled to a monthly basic salary of EUR 660, Christmas allowance in the amount of EUR 660, Easter allowance in the amount of EUR 330, vacation allowance in the amount of EUR 330, benefits such as air fares and accommodation as well as further payments for signing the contract in the amount of EUR 260,000 payable in 2 instalments of EUR 25,000 and 7 instalments of EUR 30,000 each.

13. In this respect, the Chamber observed that the Claimant claimed from the Respondent allegedly outstanding remuneration in the amount of EUR 24,989 and compensation for breach of contract in the amount of EUR 165,763, i.e. altogether the amount of EUR 190,752.
14. In continuation, the Chamber took note that it is undisputed by the parties involved that the said employment contract had been terminated on 29 December 2006, at the moment when the Respondent had submitted a petition for the execution of the termination of the relevant contract at the First Grade Committee for the Resolution of Financial Disputes of the Xxx Football Federation.
15. In this regard, the Chamber took due note that, on the one hand, the Claimant argued that the Respondent had unilaterally terminated the contractual relationship without just cause and, on the other hand, the Respondent was of the opinion that the relevant employment contract had been terminated with just cause, in particular, due to the Claimant's poor performance, his unprofessional behaviour and his refusal to accept its, the Respondent's, invitation of 4 December 2006 to terminate the contract by mutual agreement in accordance with the private agreement signed by and between the contractual parties on 12 August 2005.
16. Consequently, and in order to decide whether the employment contract had to be considered as unilaterally terminated by the Respondent with or without just cause, the Chamber, first of all, went on to analyse the contents of the private agreement, based on which the Respondent was allegedly entitled to terminate the contract.
17. In this respect, the Chamber acknowledged that the said private agreement stipulates that "*... Xxx ... during the contract of collaboration, that is from 17/08/2005 to 30/06/2008, has the right to breach the contract without the football player having any financial claim for the remaining instalments of the contract or for any other financial claim from it ...*".
18. Therefore, the Chamber deemed that the agreement in question lacked any objective criteria for the termination of the contractual relationship. In particular, the Chamber emphasised that the relevant private agreement provided only the Respondent but not the Claimant for the right to terminate the contract at any time.
19. Furthermore, the Chamber pointed out that according to the said agreement the termination of the contract on the basis of non-objective criteria would also lead to an unjustified disadvantage of the Claimant in terms of his financial rights.

20. As a consequence, the Chamber, referring to its jurisprudence, stated that if such an agreement would be accepted, this would create a disproportionate repartition of the rights of the parties to an employment contract, to the strong detriment of the Claimant.
21. In the light of the above, the members of the Chamber unanimously concluded that such a potestative clause had to be considered as invalid.
22. Consequently, and taking into consideration the established invalidity of the relevant private agreement, the Chamber reached the conclusion that the Claimant had the right to refuse the invitation of the Respondent to terminate the contract under the terms of the said private agreement.
23. Therefore, the Chamber decided that all the reasons invoked by the Respondent for the unilateral termination of the employment contract, in particular, the unproven allegations of the Claimant's poor performance and his unprofessional behaviour and his refusal to terminate the contract by mutual agreement, cannot be accepted as a just cause to terminate the employment contract and, therefore, the contract must be considered as terminated by the Respondent without just cause.
24. In view of the above considerations, the Chamber decided that the Respondent is liable to pay all outstanding monies due under the employment contract until the date on which the labour relationship is considered as terminated, i.e. until 29 December 2006.
25. In this respect, the Chamber observed that the Respondent never explicitly argued that all the due amounts until the termination of the contract had been accomplished. Consequently, the Chamber underlined that in this way the Respondent renounced to its right to defense and, thus, accepted the allegations of the Claimant with regard to the outstanding payments until the termination of the contract.
26. As a result, the Chamber concluded that the Claimant was entitled to receive from the Respondent the salaries for the months of July and November 2006 in the amount of EUR 1,320 (2 x EUR 660), the Christmas allowance 2006 in the amount of EUR 660, the Easter allowance 2006 in the amount of EUR 330, the vacation allowance 2006 in the amount of EUR 330, the share of the instalment of the further payments due on 12 December 2006 in the amount of EUR 20,000, i.e. overall outstanding remuneration in the amount of EUR 22,640.
27. Moreover, the Chamber established that the Respondent in accordance with art. 17 par. 1 of the Regulations is also liable to pay compensation for the termination of the contract without just cause.

28. In this regard, and taking into consideration the rest value of the employment contract as well as the fact that the Claimant had been playing with the Respondent during approximately half of the originally agreed contract period the Chamber established that it was adequate to award the Claimant compensation for breach of contract in the amount of EUR 100,000.
29. Finally, with regard to the claimed expenses for flight tickets and rent the Chamber referred to art. 12 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, in accordance with which a party deriving a right from an alleged fact shall carry the burden of proof. In this respect, the Chamber acknowledged that the Claimant has not presented any documentary evidence regarding his expenses for flight tickets and rent. As a consequence, the Chamber concluded that the Claimant was not able to prove the existence of such expenses. In view of the aforesaid, the Chamber decided that the Claimant is not entitled to receive any payment for the costs allegedly incurred in connection with flight tickets and rent, although the Respondent has not disputed the existence of such liabilities towards the Claimant.
30. In conclusion, the Dispute Resolution Chamber decided that the Respondent must pay to the Claimant outstanding remuneration in the amount of EUR 22,640 and compensation for breach of contract in the amount of EUR 100,000, i.e. the total amount of EUR 122,640, and that, therefore, the Claimant's claim is partially accepted. In this respect, the Chamber determined that any further claims of the Claimant are rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Xxx, is partially accepted.
2. The Respondent, Xxx, must pay the gross amount of EUR 122,640 to the Claimant, Xxx, **within 30 days** as from the date of notification of this decision.
3. In the event that the above-mentioned total amount is not paid within the stated deadline, an interest rate of 5% per year will apply as of expiry of the aforementioned time limit and the present matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.
4. The Claimant, Xxx, is directed to inform the Respondent, Xxx, directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.
5. Any further claims of the Claimant, Xxx, are rejected.

6. According to art. 61 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:

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Encl. CAS directives