

# 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,**

*as Claimant*

against the club

**Xxx, Xxx,**

*as Respondent*

regarding a contractual dispute between the parties

## **I. Facts of the case**

1. On 26 July 2005, the Xxx player, Xxx (hereinafter: the Claimant), and the Xxx club, Xxx (hereinafter: the Respondent), signed an employment contract, valid from 20 July 2005 until 30 May 2007. According to the relevant employment contract the Claimant is entitled, for the first year of the contract, to 12 monthly salaries in the amount of USD 1,250 each, the first salary payable on 20 August 2005 and the last payable on 20 July 2006, amounting to USD 15,000 in total. Furthermore, it was agreed that the remuneration as of 20 July 2006, i.e. for the second year of the contract, was to be established in an additional agreement to be concluded.
2. Equally, on 26 July 2005, the parties to the relevant employment contract signed a supplement no. 1 to the said contract, which stipulates that the Claimant is entitled to receive upon signing the contract the amount of USD 50,000 and a not further specified amount of USD 58,000, altogether the amount of USD 108,000.
3. On 4 January 2007, the Claimant lodged a claim against the Respondent at FIFA, whereby he requested to be released immediately from the employment contract binding him to the Respondent in order to continue his career with another club of his choice. Furthermore, the Claimant claimed compensation for breach of contract in the total amount of USD 132,410.
4. In this regard, the Claimant argued that the Respondent had unilaterally terminated the relevant contract without just cause by the end of July 2006. In particular, the Claimant stated that the Respondent had banned him from training, had advised him to leave the club and had allegedly paid him only salaries in the amount of USD 1,000 instead of USD 1,250 per month for the first year of the contract and only further remuneration in the amount of USD 96,840 instead of USD 108,000.
5. Moreover, the Claimant affirmed that based on the relevant employment contract, the said supplement no.1 and an alleged supplement no. 2 he would be entitled to a total remuneration in the amount of USD 250,000 for the entire duration of the contract, but he had allegedly received only the amount of USD 117,590, as follows:
  - USD 12,000 in monthly instalments of USD 1,000 each from July 2005 until June 2006 (salaries for the months of July 2005 until June 2006)
  - USD 40,000 by 23 September 2005
  - USD 56,840 by 20 February 2006
  - USD 7,500 by 1 August 2006 (salaries for the months of July, August, September, October, November and December 2006)
  - USD 1,250 by 4 October 2006 (salary for January 2007)

6. In this context, the Claimant stated that he had never received a copy of the alleged supplement no. 2 and, thus, he was not able to present the said document to FIFA. Instead, in order to prove the Respondent's financial obligation towards him in the total amount of USD 250,000 the Claimant referred to a service agreement and its annex signed between the Respondent and the Xxx Cooperation, according to which the Respondent undertakes to pay the amount of USD 250,000 to the Xxx Cooperation for the intermediation of the Claimant's transfer to the Respondent.
7. Finally, the Claimant stated that the Respondent had only released him from the relevant contract after the expiration of the summer registration period 2006 in Xxx, so that he had not been able to find a new club in summer 2006. Equally, the Claimant stated that he had also not been able to find a new club in January 2007 and, therefore, he had been without employment until the regular expiry of the relevant contract. i.e. until 30 May 2007.
8. In view of the above, the Claimant claimed from the Respondent allegedly outstanding salaries for the first year of the contract in the amount of USD 3,000 (12 x USD 250 = USD 3,000), allegedly outstanding payments related to the supplement no. 1 in the amount of USD 11,160 (USD 108,000 – USD 96,840 = USD 11,160), allegedly outstanding house renting costs during the season 2006/2007 and compensation in the amount of the rest value of the contract. Overall the Claimant claimed from the Respondent the amount of USD 132,410 (USD 250,000 – USD 117,590 = USD 132,410).
9. In its response, the Respondent stated that, indeed, it had had the intention to terminate the labour relationship with the Claimant due to his poor performance. However, the Respondent argued that it had never put this intention into practice, since the Claimant, despite its assistance, had not been able to find a new club. In this respect, the Respondent emphasised that the two parties had looked for a new club for the Claimant. In particular, on 24 August 2006, upon the Claimant's request of the same date, it had issued the written confirmation that the Claimant was a "free agent", i.e. that the Respondent would not object to a transfer of the Claimant to a new club. Furthermore, the Respondent added that it had already given its oral approval to the Claimant's transfer a few weeks earlier.
10. In this regard, the Respondent stated that, since the Claimant had failed to find a new club, it had continued to pay the full salary to the Claimant until the date on which the parties had been advised by FIFA to consider the contract as terminated so as to enable the Claimant to be transferred to a new club, i.e. by the end of January 2007.
11. Furthermore, the Respondent contested the existence of the alleged supplement no. 2 at the basis of the Claimant's claim. Equally, the Respondent stated that

the service agreement and its annex concluded between the Respondent and the Xxx Cooperation was not relevant for the matter at stake, since the beneficiary was not the Claimant but a third party.

12. Finally, the Respondent declared that, except the outstanding proportion of the salaries for the first year of the contract in the total amount of USD 3,000, it had made all the due payments towards the Claimant until the termination of the contract by the end of January 2007. In this respect, the Respondent maintained that the parties had not concluded an additional agreement regarding the salaries as from 20 July 2006 and, therefore, the monthly salary for the second year of the contract remained at the same amount as it had originally been agreed upon, i.e. the amount of USD 1,250 per month.

## **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 4 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 is the competent body to decide on the present litigation involving a Xxx player and an Xxx club regarding the alleged breach of an employment contract.
4. 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 26 July 2005 and the claim was lodged at FIFA on 4 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.

5. In continuation, and entering into the substance of the matter, the Chamber acknowledged that, on 26 July 2005, the Claimant and the Respondent had signed an employment contract, valid from 20 July 2005 until 30 May 2007, and a supplement no. 1 to the said contract.
6. In this regard, the Chamber noted that, on the one hand, the Claimant, based on the said employment contract, the supplement no. 1 and an alleged supplement no. 2, claimed from the Respondent allegedly outstanding salaries due for the first year of the contract in the amount of USD 3,000 (12 x USD 250 = USD 3,000), allegedly outstanding payments related to the supplement no. 1 in the amount of USD 11,160 (USD 108,000 – USD 96,840 = USD 11,160), allegedly outstanding house renting costs during the season 2006/2007 and compensation for breach of contract in the amount of the rest value of the contract, i.e. salaries and further remuneration, overall the amount of USD 132,410.
7. On the other hand, the Chamber noted that the Respondent declared that, except the outstanding proportion of the salaries for the first year of the contract in the total amount of USD 3,000 (12 x USD 250 = USD 3,000), it had made all the outstanding payments towards the Claimant until the termination of the contract by the end of January 2007.
8. In this respect, the Chamber, first and foremost, established that the Claimant was not able to prove the existence of the alleged supplement no. 2, in particular, he did not present any pertinent documentary evidence regarding the said supplement no. 2. Therefore, the Chamber decided that the supplement no. 2 cannot be considered at the basis of the Claimant's claim.
9. Furthermore, the Chamber took due note that, on the one hand, the Claimant argued that the Respondent had unilaterally terminated the relevant contract without just cause by the end of July 2006 and, on the other hand, the Respondent stated that it had not terminated the contract.
10. In this regard, the Chamber established that it was not contested by the Claimant had he had received the major part of his salaries from the Respondent until the end of January 2007, when the parties, upon the Claimant's request, had been advised by FIFA to consider their contractual relationship as terminated so as to enable the Claimant to be transferred to a new club.
11. Consequently, and taking into consideration that finally the Claimant left the Respondent and, on 4 January 2007, lodged a claim against the Respondent, requesting to be released immediately from the employment contract binding

him to the Respondent, the Chamber decided that the contract had to be considered as unilaterally terminated by the Claimant by the end of January 2007.

12. In continuation, the Chamber went on to deliberate whether the facts of the case constitute a just cause for the Claimant to prematurely terminate the employment contract.
13. In this regard, the Chamber acknowledged that the Respondent had undisputedly reduced the Claimant's salary during the first year of the contract in the amount of USD 250 per month. Furthermore, the Chamber emphasised that the Respondent was not able to corroborate that it had made all the payments related to the supplement no. 1. In particular, the Chamber established that the Respondent did not present any documentary evidence regarding the amount of USD 11,160 deriving from the supplement no. 1. Moreover, the Chamber took note that the Respondent had banned the Claimant from training and advised him to leave the club.
14. As a consequence, the Chamber decided that the Respondent was found to be in breach of contract and, in particular, that this breach of contract in accordance with its jurisprudence has reached such a level that the Claimant suffering the breach is entitled to terminate the contract unilaterally.
15. In the light of the above, the Chamber reached the conclusion that the Claimant terminated the relevant employment contract with just cause.
16. Consequently, the Chamber decided that the Respondent is liable to pay all outstanding monies due under the relevant employment contract until the date on which the labour relationship is considered as terminated, i.e. until the end of January 2007.
17. In this respect, the Chamber determined that until the date of the termination of the relevant employment contract, i.e. by the end of January 2007, salaries (USD 3,000) and further remuneration (USD 11,160) in the total amount of USD 14,160 (USD 3,000 + USD 11,160 = USD 14,160) have not been paid by the Respondent.
18. Moreover, with regard to the claimed expenses for 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 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 rent.

19. Therefore, the Chamber decided that the Respondent has to pay outstanding remuneration in the total amount of USD 14,160 to the Claimant.
20. In continuation, the Chamber established that the Respondent in accordance with art. 17 par. 1 of the Regulations is also liable to pay compensation for the committed breach of contract.
21. In this regard, and taking into consideration the rest value of the relevant employment contract, i.e. the salaries for the months between February and May 2007 (4 x USD 1,250), the Chamber established that it was adequate to award the Claimant compensation for breach of contract in the amount of USD 5,000. In this respect, for the sake of completeness, the Chamber held that the parties did not appear to have concluded an additional agreement regarding the Claimant's remuneration as of 20 July 2006, as initially intended. However, the DRC noted that, as of the aforementioned date, the Respondent had paid to the Claimant the monthly salary which had been agreed upon for the first year of the contract, and that this had not been objected by the Claimant.
22. In conclusion, the Dispute Resolution Chamber decided that the Respondent must pay to the Claimant outstanding remuneration in the amount of USD 14,160 and compensation for breach of contract in the amount of USD 5,000, i.e. the total amount of USD 19,160. In this respect, the Chamber determined that any further claims of the Claimant are rejected. Therefore, the Chamber established the Claimant's claim is partially accepted.

### **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 USD 19,160 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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For the Dispute Resolution Chamber:

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Markus Kattner  
Deputy General Secretary

Encl. CAS directives