

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. The Xxx player, Xxx (hereinafter: the Claimant), and the Xxx club, Xxx (hereinafter: the Respondent), concluded a first employment contract dated 19 July 2006, written in English, and valid from 1 July 2006 until 30 June 2008. According to this contract the Claimant was entitled, for the first year of the contract, to an annual salary in the total amount of approximately EUR 8,000, further payments for signing the contract in the amount of EUR 62,000 payable in 1 instalment of EUR 6,200 and 5 instalments of EUR 11,600 as well as benefits such as air fares and accommodation. Furthermore, in this contract it was stipulated that for the second year of the contract the payment terms of the first year should apply.
2. Moreover, the parties signed a second employment contract dated 25 July 2006 for the same period of time, written in Xxx. In this contract it was stipulated that the Claimant was entitled to a monthly basic salary of EUR 680, Christmas allowance in the amount of EUR 680, Easter allowance in the amount of EUR 340, benefits such as air fares and accommodation as well as further payments for signing the contract in the amount of EUR 62,000 payable in 1 instalment of EUR 6,200 and 5 instalments of EUR 11,600.
3. On 28 December 2006, the Claimant lodged a claim at FIFA against the Respondent for breach of contract. In particular, the Claimant argued that the Respondent had imposed disciplinary measures on him, had failed, since 1 September 2006, to fulfil its financial obligations deriving from the above-mentioned employment contracts and, finally, had unilaterally terminated the contractual relationship without just cause. Moreover, the Claimant stated that he had signed the second contract, written in Xxx, a language he apparently did not understand, in good faith regarding the remuneration terms.
4. Therefore, the Claimant claimed allegedly outstanding remuneration in the amount of EUR 16,436. In particular, he claimed the following payments:
 - share of the salary for September 2006 in the amount of EUR 89
 - share of the salary for October 2006 in the amount of EUR 69
 - salaries for the months of November and December 2006 in the amount of EUR 769 each, i.e. the overall amount of EUR 1,538
 - Christmas allowance 2006 in the amount of EUR 380
 - share of the instalment of the further payments due on 30 September 2006 in the amount of EUR 1,600
 - instalment of the further payments due on 30 November 2006 in the amount of EUR 11,160
 - uncovered costs for rent until December 2006 in the amount of EUR 1,600

5. Furthermore, the Claimant claimed compensation in the amount of EUR 95,271 allegedly corresponding to the rest value of the contract. In particular, he claimed the following payments:
 - remuneration for the months of January until July 2007 in the total amount of EUR 5,991
 - instalments of the further payments due on 30 January 2007, 30 March 2007, 30 June 2007, 30 September 2007, 30 November 2007, 30 January 2008, 30 March 2008 and 30 June 2008 in the amount of EUR 11,160 each, i.e. overall the amount of EUR 89,280
6. Altogether, the Claimant requested from the Respondent the payment of EUR 111,707.
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 21 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 29 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 Respondent and stated in particular that the request of the Respondent for the termination of the contract with just cause had been accepted.
8. In this regard, the Respondent emphasised that, on 4 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 unprofessional behaviour. In this respect, the Respondent referred to an incident in a training session on 14 November 2006. In particular, the Respondent argued that the Claimant had physically and verbally attacked a team-mate.
9. With regard to the allegedly outstanding amounts the Respondent argued that any delays in the payments did not fall behind the deadlines established by the Xxx sports law, according to which a club has the right to deposit contractual instalments and salaries until one month later than the date indicated in a contract.
10. Moreover, the Respondent argued that only the second contract signed between the parties on 25 July 2006 was valid, due to the fact that the first one signed

between the parties on 19 July 2006 had been replaced by mutual agreement upon the conclusion of the second one.

11. In his replica, the Claimant argued that he refused to acknowledge the jurisdiction of the First Grade Committee for the Resolution of Financial Disputes of the Xxx Football Federation. In this respect, the Claimant declared that the above-mentioned Committee of the Xxx Football Federation did not constitute an independent arbitration tribunal guaranteeing fair proceedings and equal representation of players and clubs at national level in accordance with art. 22 b) of the FIFA Regulations for the Status and Transfer of Players. Furthermore, the Claimant argued that he had not been personally invited to attend the relevant hearing of the said Committee of the Xxx Football Federation and, therefore, the decision in question had been passed in his absence. As a consequence, the Claimant was of the opinion that he was entitled to lodge a complaint against the Respondent at FIFA.
12. Moreover, the Claimant argued that he had never behaved in an unprofessional manner, in particular, the relevant training incident was only a minor one, i.e. a verbal dispute between him and one of his team-mates.
13. In its duplica, the Respondent provided FIFA with the documentation in support of its previous statement. Furthermore, it provided FIFA with a declaration, by means of which it was confirmed that no appeal had been lodged against the decision of the First Grade Committee for the Resolution of Financial Disputes of the Xxx Football Federation.
14. 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, constituted a deciding body in line with the FIFA Regulations (cf. page 45 point 5. of the Statutes of the Xxx Football Federation).

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 28 December 2006, 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 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 body of the Xxx Football Federation did not constitute an independent arbitration tribunal guaranteeing fair proceedings and equal representation of players and clubs at national level in accordance with art. 22 b) of the 2005 edition of the FIFA Regulations for the Status and Transfer of Players, for which reason, he did not recognise its jurisdiction to deal with the present matter and 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. 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 before the First Grade Committee of the Xxx Football Federation. The Claimant explicitly contested the competence of the national body. 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 contracts at the basis of the present dispute were signed in July 2006 and the claim was lodged at FIFA on 28 December 2006. 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 the Claimant and the Respondent had signed two employment contracts for the same period of time, i.e. both valid from 1 July 2006 until 30 June 2008.
13. In this respect, the Chamber observed that the Respondent argued that only the second contract signed between the parties on 25 July 2006 was valid, due to the

fact that the first one signed between the parties on 19 July 2006 had been replaced by mutual agreement upon the conclusion of the second one.

14. Therefore, and in order to determine the applicable contractual terms at the basis of the Claimant's claim, the Chamber went on to examine the contents of the two employment contracts in question.
15. In this regard, the Chamber acknowledged that in the employment contract dated 19 July 2006 it was agreed that for the second year of the contract the remuneration terms of the first year of the contract should apply, whereas in the second employment contract dated 25 July 2006 no reference was made to the remuneration terms for the second year of the contract.
16. On account of the above, and in view of this lack of substantial contractual terms in the second contract, the Chamber decided that the first contract could not be considered as replaced but only completed by the second contract. Therefore, the Chamber determined that the Claimant's claim is based on the first contract in connection with the remuneration terms contained in the second contract. In this respect, the Chamber emphasised that the remuneration terms contained in the second contract should not only apply for the first but also for the second year of the contractual relationship.
17. Consequently, the Chamber confirmed that according to the relevant terms of the second employment contract the Claimant was entitled to receive, for each year of the contract, a monthly salary in the amount of EUR 680, Christmas allowance in the amount of EUR 680, Easter allowance in the amount of EUR 340, benefits such as air fares and accommodation as well as further payments for signing the contract in the amount of EUR 62,000 payable in 1 instalment of EUR 6,200 and 5 instalments of EUR 11,600.
18. In continuation, the Chamber took note that it is undisputed by the parties involved that the contractual relationship had been terminated on 21 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.
19. In this respect, the Chamber observed that the Claimant claimed from the Respondent allegedly outstanding remuneration in the amount of EUR 16,436 and compensation for breach of contract in the amount of EUR 95,271, i.e. altogether the amount of EUR 111,707.
20. 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 fact that the Claimant physically and verbally assaulted a team-mate on the occasion of a training session.

21. In view of the above, the Chamber went on to deliberate as to whether the Claimant's assault against a team-mate on one occasion can be considered as a just cause for the Respondent to prematurely terminate the employment relationship.
22. In this respect, the Chamber pointed out that a player's one-time assault against a team-mate, no matter if verbally or physically, could not constitute, *per se*, a valid reason for the termination of a labour relationship. In particular, the Chamber emphasised that, in connection with infringements of disciplinary standards such as the one in the matter at hand, the party concerned should only have the right to terminate the contractual relationship as *ultima ratio*, i.e. in case of repeated incidents of such kind. Under such circumstances, a player committing such disciplinary infractions would also have to be warned beforehand of the eventual consequences of his actions if they were to be repeated.
23. As a consequence, taking into consideration that the argument invoked by the Respondent cannot be accepted as a just cause to terminate an employment contract, the Chamber concluded that the contractual relationship between the Claimant and the Respondent must be considered as unilaterally terminated by the Respondent without just cause.
24. In view of the above, 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 21 December 2006.
25. In this respect, the Chamber acknowledged that the Respondent stated that any delays in the payments were not falling behind the deadlines established by the Xxx sports law, but that it did not particularly argue that all the due payments until the termination of the contract had been accomplished.
26. Consequently, the Chamber underlined that in this way the Respondent accepted the allegations of the Claimant with regard to the outstanding payments due until the termination of the contract. In this respect, the Chamber also deemed appropriate to point out that, by failing to pay due amounts to the Claimant which had partially already been payable in September 2006, the Respondent had in fact itself breached the employment contract concluded with the Claimant.

27. As a result, the Chamber concluded that the Claimant was entitled to receive from the Respondent the share of the salary for September 2006 in the amount of EUR 89, the share of the salary October 2006 in the amount of EUR 69, the salaries for the months of November and December 2006 in the amount of EUR 680 each, the Christmas allowance 2006 in the amount of EUR 380, the share of the instalment of the further payments due on 30 September 2006 in the amount of EUR 1,600, the instalment of the further payments due on 30 November 2006 in the amount of EUR 11,160 and uncovered costs for rent until December 2006 in the amount of EUR 1,600, i.e. overall outstanding remuneration in the amount of EUR 16,258.
28. 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.
29. In this regard, and taking into consideration the rest value of the relevant employment contract as well as the fact that the Claimant had been playing with the Respondent during approximately a quarter 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 60,000.
30. In conclusion, the Dispute Resolution Chamber decided that the Respondent must pay to the Claimant outstanding remuneration in the amount of EUR 16,258 and compensation for breach of contract in the amount of EUR 60,000, i.e. the total amount of EUR 76,258 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 76,258 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