

## **Decision of the Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 5 December 2008,

in the following composition:

**Slim Aloulou** (Tunisia), Chairman  
**Gerardo Movilla** (Spain), member  
**Joaquim Evangelista** (Portugal), member  
**Mario Gallavotti** (Italy), member  
**Caio Cesar Vieira Rocha** (Brazil), member

on the claim presented by the player,

**Z,**

*as Claimant / Counter-Respondent*

against the club,

**K,**

*as Respondent / Counter-Claimant*

with the club,

**S,**

*as Counter-Respondent*

regarding an employment-related contractual dispute arisen between the player Z, and  
the club K.

## I. Facts of the case

1. On 20 July 2006, the player (hereinafter: "Claimant" or "player") and the club K (hereinafter: "Respondent") concluded an employment contract that was valid from 1 June 2006 until 31 May 2008.
2. According to art. 1 A) of this employment contract, the player was entitled to a monthly salary of 537 and according to art. 1 B), to a "transfer payment" of EUR 300,000. Art. 1 C) of this employment contract, which dealt with the form of payment, specified that the player was entitled to EUR 300,000 over 34 matches = EUR 8,823 per match (or a percentage of this amount, depending on the extent of play) payable "in 45 days". The player was entitled to EUR 600,000 for the 2007-08 season, which was to be paid as follows: instalments of EUR 100,000 each in July and August 2007 and on 15 December 2007, and the remaining EUR 300,000 over 34 matches = EUR 8,823 per match (taking into account the above-mentioned qualification).
3. An additional agreement signed between the parties on 28 July 2006 contained other criteria relating to the per-match payments to the player and stipulated that every single match payment included the basic monthly salary and that when there was no such match payment, the player was to be paid the basic salary. This additional agreement also stipulated that the "sum is to be paid after every four matches within 45 days".
4. On 30 May 2007, the player notified the club in writing of the termination of the employment contract due to the club's failure to remit payments totalling EUR 35,292 relating to matches of 4 March 2007, 11 March 2007, 18 March 2007 and 2 April 2007, which had allegedly fallen due on 17 May 2007. In this written notice, the player claimed payment of a total amount of EUR 79,407, referring to a total of nine matches including the match immediately prior to the termination of the contract.
5. On 28 September 2007, the T Football Federation issued the player's International Transfer Certificate (ITC) to the B Football Union. Despite the ITC having been issued, K reserved the right to lodge a complaint against the player.

### Claim Claimant:

6. The player lodged a complaint against K with FIFA on 27 June 2007, with a subsequent amendment in September 2007, and claimed that:
  - 1) the employment contract concluded with K on 20 July 2006 should be annulled;
  - 2) K should be obliged to pay him the remaining value of the contract (2007-08 season), totalling EUR 600,000.
7. The player substantiated these claims by stating that he had had a right to EUR 8,823 per match (or a percentage of this amount, depending on the extent of play), which had been payable 45 days after every four games in which he played. After K had failed to make payments for the aforementioned matches (cf. point I.4 above), the player had terminated the employment contract. K had received the written notice on 1 June 2007 and had subsequently settled the outstanding debts on 5 June 2007 and 11 July 2007 respectively. According to the player, this delayed payment should not affect the just cause with which he terminated the employment contract.
8. According to the player, the payment clause in the employment contract stated that he had the right to terminate the contract with just cause in the event of non-payment.
9. In an amendment to his claim presented in September 2007, the player specified the dates of the nine matches as follows: 2, 8, 15, 22, 29 April 2007 and 6, 13, 20, 27 May 2007.
10. The player also stated that he had signed an employment contract with the club S (hereinafter: "Counter-Respondent") on 2 August 2007, which was valid for one year with a basic monthly salary of 500.

### Response and counterclaim Respondent:

#### (a) Response:

11. The Respondent fully rejected the player's allegations. According to K, the player had intentionally stated the order of the matches in which he had played inaccurately. K acknowledged that the per-match payments had been payable within 45 days after every four matches. There was no dispute between K and the player relating to the 17 matches that took place in the first half of the 2006-07 season. K asserted that the matches in the second half of the said season had been remunerated properly. The first of these matches (18<sup>th</sup> match) had taken place on 26 January 2007 and the 21<sup>st</sup> match on 18 February 2007, as a result of which the

player had received a cash payment of EUR 35,290 in match bonuses on 2 April 2007. The player had received the next match bonuses, payable for the 22<sup>nd</sup> to 25<sup>th</sup> matches (23 February 2007 until 18 March 2007), on 1 May 2007. Likewise, he had received match bonuses for the 26<sup>th</sup> to 29<sup>th</sup> matches (2 April 2007 until 21 April 2007) by bank transfer on 4 June 2007. The player had received match bonuses for the 30<sup>th</sup> to 33<sup>rd</sup> matches (28 April 2007 until 20 May 2007) and for the 34<sup>th</sup> match (26 May 2007) by bank transfer on 10 July 2007. K admitted that it had paid the match bonuses for the 30<sup>th</sup> to 33<sup>rd</sup> matches five days too late, but indicated that a delay of a few days did not provide justifiable grounds for a unilateral termination of the contract. It maintained, therefore, that the player's complaint should be rejected.

(b) Counterclaim:

12. The Respondent claimed that the player had cancelled the employment contract, which had been valid until 31 May 2008, without just cause. Furthermore, he had been absent from the club's preparations for the 2007-08 season, which had taken place in July 2007, and had not given any valid reason. Moreover, he had concluded a contract with S on 2 August 2007, that is, while his employment contract with the K club had still been valid. This constituted an infringement of art. 13 of the FIFA Regulations on the Status and Transfer of Players. The departure of the player had damaged the reputation of K and forced it to find a replacement. For this inconvenience, K claimed that, in accordance with art. 17 par. 2 of said FIFA regulations, it should receive from the player in joint liability with S compensation of 480,000, which corresponds to the transfer compensation paid to the player's former club G, plus EUR 300,000 referring to the fact that K had made payments totalling EUR 586,474 to the player during the term of the contract, including interest as from 1 November 2007.

Claimant's response:

13. The player reiterated his claim. He maintained that he had had the right to terminate his contract on 30 May 2007 when he had not received the required match bonuses in time. K had not provided written proof of the dates on which the relevant match bonuses had been transferred. Moreover, the admitted delay of five days was a sufficiently long period to justify a unilateral termination of the contract. The player also emphasised that K had received notice of the termination on 1 June 2007. The outstanding payments asserted in the written notice had not been made until 6 June 2007 and 10 July 2007 respectively.
14. Furthermore, the player claimed that the counterclaim submitted by K should be rejected. After he had terminated the contract with just cause, he had no longer had any obligation to participate in the training sessions/matches of the 2007-08

season. He also maintained that the claim for payment of 480,000 and EUR 300,000 should be rejected in conformity with law and equity. He had met all of his contractual obligations up to the termination of his contract.

Counter-Respondent's response:

15. S stated that it had signed a contract with the player on 2 August 2007 after the player had declared in writing that he was not contractually bound to any other club nor had open obligations to any other club. As a result, S had assumed that the player was a free agent, therefore no infringement had been committed.

Respondent's final statements:

16. K reiterated the fact that it had only made the final payment of the player's match bonuses with a delay of five days. It maintained that a delay of five days did not justify a unilateral termination of the contract, and that the player's termination of the contract should therefore be considered null and void. K also asserted that the match bonuses and in particular the dates on which they had been paid were documented in writing.
17. As regards the argument brought forth by S, to the effect that the player had informed it that he was unattached at the time of the transfer, K stated that it could not accept this claim. Agreements between the player and S did not concern it as a third-party. Moreover, according to the commentary on art. 17 of the Regulations on the Status and Transfer of Players, the player's new club was always jointly liable for payments to the player's former club, even if the new club had not induced the player or been "involved" in any way.

The Claimant's and Counter-Respondent's final statements:

18. Both the player and S stood by their previous statements.

## **II. Considerations of the Dispute Resolution Chamber**

1. First of all, the Dispute Resolution Chamber analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 27 June 2007. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2005 (hereinafter: Procedural Rules) are applicable to the matter at hand (cf. art. 18 par. 2 and 3 of the Procedural Rules).
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2008), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player and a club.
3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2008) and considering that the present claim was submitted on 27 June 2007 and the employment contract at the basis of the dispute was signed on 20 July 2006, the previous version of the regulations (edition 2005; hereinafter: Regulations) is applicable to the matter at hand as to the substance.
4. Once its competence and the applicable Regulations were thus established, the Dispute Resolution Chamber went on to deal with the substance of the case. The members of the Chamber duly noted that the Claimant and the Respondent had signed an employment contract, which, according to the Claimant, he had terminated with just cause in the light of K having failed to fulfil its contractual financial obligations. Therefore, the Claimant asks to be awarded compensation for breach of contract payable by K. The Respondent, for its part, rejects such claim maintaining that the player had no just cause to terminate the employment contract. In fact, the Respondent claims that the player had acted in breach of contract by unilaterally terminating his employment contract and has lodged a counterclaim against the player in this connection.
5. Reverting to the reasons of the player to terminate the pertinent employment contract in writing on 30 May 2007, the Chamber recalled that in accordance with the player's written notice of termination he invoked the club's alleged failure to remit contractual payments totalling EUR 35,292 relating to matches of 4 March 2007, 11 March 2007, 18 March 2007 and 2 April 2007, which had allegedly fallen

due on 17 May 2007, as the reason to prematurely terminate the employment contract. Such reason, so the player, constitutes a just cause for the termination of the employment contract concluded with the Respondent.

6. In this context, the Chamber noted that prior to proceeding with the said termination of the employment contract, the player had not put the club in default of its obligations in writing.
7. The player maintains that in accordance with the payment clause in the employment contract he had the right to terminate the contract with just cause in the event of the club failing to fulfil its financial obligations. After careful study of the relevant contract, though, the members of the Chamber took note that no such clause is explicitly included in the pertinent employment contract.
8. On the other hand, the Chamber took note of the position of K, which had confirmed that the per-match payments had been payable to the player within 45 days after every four matches. Furthermore, according to the Respondent, the player had stated the order of the matches in which he had played in an inaccurate way and it presented a detailed match list demonstrating the match numbers and corresponding dates. The Chamber took particular note of the fact that the player had not contested the accuracy of such match list.
9. On account of the above, the members of the Chamber concluded that the parties do agree that the player was entitled to receive EUR 8,823 per match (for a total of 34 matches according to the pertinent employment contract) and that such per-match payments fell due within 45 days after each sequence of four matches. Equally, it is not contested that the counting of the pertinent sequence started again with the 18<sup>th</sup> match after the mid-season break of the national championship.
10. The members of the Chamber then proceeded with a detailed study of the documentation on file relating to the payments made by the Respondent to the Claimant, bearing in mind that the Claimant had terminated the pertinent employment contract on the basis of the alleged non-payment of bonuses for matches of 4 March 2007, 11 March 2007, 18 March 2007 and 2 April 2007, which had allegedly fallen due on 17 May 2007 (cf. the Claimant's written notice of termination mentioned under point I.4 above). In this context, the Chamber equally recalled that according to the Respondent, the Claimant had stated the order of the matches in an inaccurate manner. Furthermore, the members of the Chamber stressed once more that the accuracy of the match list presented by the Respondent in its defence has not been contested by the Claimant.

11. Subsequently, the Chamber established that from the relevant match list and the payment vouchers, which are duly signed by the player and which, contrary to the Claimant's allegations do bear a date, presented by the Respondent it is evident that the day on which the Claimant proceeded with the termination of the employment contract, i.e. 30 May 2007, the Respondent had not been in delay of its financial obligations towards the Claimant. In this regard, the Chamber pointed out that according to the match list of the Respondent the match of 2 April 2007 was part of the sequence of the 26<sup>th</sup> to 29<sup>th</sup> matches (2 April 2007 until 21 April 2007) and was paid punctually by the Respondent to the Claimant by bank transfer of 4 June 2007, receipt of which was acknowledged by the Claimant. Equally, the deciding authority stated that on the basis of the match list and payment vouchers provided, the match bonuses for the sequence pertaining to the matches 22 to 25 (23 February 2007 until 18 March 2007), thus comprising three of the four matches mentioned by the player in his termination notice, had duly been paid by the Respondent to the Claimant in a timely manner on 1 May 2007.
12. As a result of the above, the Chamber was eager to emphasise that on 30 May 2007, day on which the player served the notice of termination to K, no outstanding remuneration was due by the Respondent to the Claimant. Consequently, no just cause on this basis could be invoked by the Claimant.
13. In this connection, the Chamber recalled that, besides the afore discussed primary argumentation which cannot be backed, according to the Claimant, the delay of five days, admitted by K, in the fulfilment by the Respondent of its financial obligations pertaining to the sequence of the 30<sup>th</sup> to the 33<sup>rd</sup> matches (28 April 2007 until 20 May 2007) is already a sufficiently long period of time to justify a unilateral termination of the employment contract. The members of the Chamber could only fully disagree to such point of view referring to the Chamber's well-established jurisprudence in this regard. The Dispute Resolution Chamber deemed appropriate to point out that, in the past, it had on numerous occasions upheld the unilateral termination of an employment contract by players who had, depending on the particular circumstances of the relevant case at stake, not received their salaries for two or more months. Yet, a minor delay of merely five days could not be considered as a just cause, in particular in a case like the one at hand, where the club had fully and properly complied with its financial obligations for almost an entire year and the player never put the club in default regarding outstanding payments. Moreover, the Chamber was eager to emphasise that the relevant delay had occurred more than a month after the player having unilaterally terminated the employment contract.
14. The Chamber noted that no other reason but the alleged non-payment by the Respondent of matches of 4 March 2007, 11 March 2007, 18 March 2007 and 2

April 2007 on 17 May 2007 is invoked by the Claimant as a just cause for his termination of the employment contract on 30 May 2007. As exposed, this line of defence does not stand. Yet, while referring to its considerations pertaining to very short delays in payment (cf. point II.13 above) the Chamber deemed it important to highlight that, in any way, irrespective of the aforementioned, even in the hypothetical event of the Respondent having failed to remit to the Claimant payments for matches of 4 March 2007, 11 March 2007, 18 March 2007 and 2 April 2007 on 17 May 2007 as invoked by the Claimant in his written notice of termination, such failure would not constitute a valid reason for the Claimant to terminate the employment contract as early as on 30 May 2007.

15. Consequently, taking into account the preceding considerations, the Chamber rejected the arguments put forward by the player and concurred that the Claimant had no just cause for the unilateral termination of the employment contract.
16. On account of all of the above-mentioned considerations, the Chamber decided that the Claimant had acted in breach of the employment contract by unilaterally terminating such contract without just cause on 30 May 2007. Consequently, in accordance with art. 17 par. 1 of the Regulations, the Claimant is liable to pay compensation to the Respondent.
17. Furthermore, in accordance with the unambiguous contents of art. 17 par. 2 of the Regulations the Chamber established that the player's new club, i.e. S, shall be jointly and severally liable for the payment of compensation. In this respect, the Chamber was eager to point out that the joint liability of the player's new club is independent from the question as to whether the new club has committed an inducement to contractual breach. Neither needs the new club to have in any other way been involved in the relevant unjustified unilateral termination. This conclusion is in line with the well-established jurisprudence of the Chamber that was repeatedly confirmed by the Court of Arbitration for Sport (CAS) (CAS 2008/A/1568 Tomas Mica & Football Club Wil 1900 v/FIFA & Club PFC Naftex AC Bourgas).
18. In view of the above, the members of the Chamber proceeded to deliberate on the amount of compensation payable by the Claimant to the Respondent taking into consideration art. 17 par.1 of the Regulations, the constant jurisprudence of the Dispute Resolution Chamber and the counterclaim of the Respondent.
19. The Chamber then turned to the Respondent's counterclaim which includes the amount of 480,000, allegedly corresponding to the transfer compensation paid to the player's former club, G, and the amount of EUR 300,000.

20. With respect to the transfer compensation of 480,000 that K alleges having paid to the player's former club, after careful study of the documentation presented by K in this respect, the members of the Chamber agreed that such documentation does not demonstrate beyond doubt that the said amount was in fact paid to the club, G, by K. Consequently, whereas fees and expenses incurred by a club for the acquisition of a player's services in so far as these have not yet been amortised over the term of the relevant contract may be included as one of the criteria to be taken into account in the calculation of compensation (cf. art. 17 par. 1 of the Regulations), the Chamber decided that, in the specific case at hand, due to the lack of sufficient documentary evidence in this respect, no (non-amortised) transfer compensation shall be included in the calculation of the compensation for breach of contract due by the player to K.
21. Subsequently, turning their attention to the remaining value of the pertinent employment contract after its termination by the player on 30 May 2007, which value constitutes an essential criterion in the calculation of the amount of compensation in accordance with art. 17 par. 1 of the Regulations and the well-established jurisprudence of the Chamber, the members of the Chamber acknowledged that the relevant employment contract was to run until 31 May 2008 and the remuneration due to the player during such time, i.e. for the 2007-08 season, was EUR 600,000. In this context, the Chamber recalled that the counterclaim of the Respondent includes the amount of EUR 300,000.
22. On account of the aforementioned circumstances, the Chamber decided to accept the Respondent's claim for payment of EUR 300,000 as compensation for breach of contract without just cause by the player. This in particular in view of the ratio between the claimed compensation and the remaining value of the contract that had been breached. Yet, the Chamber pointed out that, although the consideration of further criteria does not appear to be necessary/appropriate in the matter at stake, this shall not be understood that the Chamber considers the rest value of an employment contract to be the only criteria of relevance in such issues.
23. On account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the player Z, must pay the amount of EUR 300,000 to K as compensation for breach of contract. Furthermore, the club, S, is jointly and severally liable for the payment of the relevant compensation.

### **III. Decision of the Dispute Resolution Chamber**

1. The claim of the Claimant, the player, Z, is rejected.
2. The claim of the Counter-Claimant, the club, K, is partially accepted.
3. The player, Z, has to pay to the Counter-Claimant, the club, K, the amount of EUR 300,000 **within 30 days** as from the date of notification of the present decision.
4. If this amount is not paid within the aforementioned time limit, a 5% interest rate *per annum* as of the expiry of the said time limit will apply and the matter will be submitted to the FIFA Disciplinary Committee upon request for its consideration and decision.
5. The Counter-Respondent, the club, S, is jointly and severally liable for the aforementioned payment.
6. Any further request filed by the Counter-Claimant, K, is rejected.
7. K is directed to inform the player Z and the club S immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

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**Note relating to the motivated decision** (legal remedy):

According to art. 63 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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Jérôme Valcke  
Secretary General

Encl: CAS directives