

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

passed in Zurich, Switzerland, on 19 February 2009,

in the following composition:

**Slim Aloulou (Tunisia)**, Chairman

**Philippe Piat (France)**, member

**Mick Mc Guire (England)**, member

**Mario Gallavotti (Italy)**, member

**Reinhard Rauball (Germany)**, member

on the claim presented by the club

**T,**

*as Claimant*

against the player

**M,**

*as Respondent*

and the club

**L,**

*as intervening party*

regarding a contractual dispute between  
the player and the club

**I. Facts of the case**

1. The P player M (hereinafter: the Respondent), born in November 1976, and the club, T (hereinafter: the Claimant), concluded an employment contract valid as from 29 January 2005 until 1 January 2008, with an option until 30 June 2008. According to the said contract the Respondent was entitled to receive for the year 2005 the amount of EUR 400,000 (plus EUR 100,000 match bonuses), for the 2006 the amount of EUR 440,000 (plus EUR 100,000 match bonuses), for the year 2007 the amount of EUR 460,000 (plus EUR 100,000 match bonuses), and for the year 2008 the amount of EUR 250,000 (plus EUR 50,000 match bonuses).
2. On 28 December 2006, the Respondent prematurely terminated the above-mentioned employment contract signed with the Claimant. In particular, the Respondent emphasised that his state of health forced him to terminate his sports activity.
3. On 6 December 2007, the Single Judge of the Players' Status Committee authorised the P Football Association to provisionally register the Respondent as an amateur with its affiliated club L (hereinafter: the club L) with immediate effect.
4. On 4 March 2008, the Claimant sent a claim requesting that the Respondent pays the amount of EUR 2,592,653 as compensation for the breach of contract, plus 5% interest as from 28 December 2006 as well as that the club L shall be jointly and severally liable for such payment. In addition sporting sanctions should be imposed on the Respondent and all costs and expenses shall be paid by the Respondent. In particular, the Claimant contested that the Respondent had been registered as an amateur with the club L.
5. Calculation of the Claimant: agreed remuneration for the Respondent during the year 2007, the amount of EUR 560,000 including match bonuses and for the period between January 2008 until June 2008 the amount of EUR 300,000 also including match bonuses, thus a total amount of EUR 860,000. The Claimant paid the amount of EUR 800,000 to the Respondent's former club, thus the amortised transfer compensation amounts to EUR 343,000 (total duration of employment contract 3,5 years). The Claimant paid the amount of EUR 1,500,000 to replace the Respondent to the club G as well as the amount of USD 100,000 as commission, amortised the amount of EUR 63,694. The Claimant paid the amount of EUR 20,000 as commission for the transfer of the Respondent, thus amortised the amount of EUR 8,571. The Claimant is deducting the amount of EUR 182,612 equivalent to the difference between the higher salary of the Respondent and the lower salary to the new player. Finally, the Claimant requested the reimbursement of the incurred costs.
6. The Respondent rejected the claim of the Claimant and emphasised that the said club has to prove that he had terminated the contract without just cause and that therefore it had suffered any damage. Moreover, the Respondent stressed that the Claimant had

failed to pay him any remuneration since November 2006. Finally, the Respondent stressed that he is no longer a member of organized football.

7. The club L also rejected the claim of the Claimant and emphasised that it is an amateur club and that it had requested the registration of the Respondent as an amateur. However, the Respondent's state of health had made it impossible for him to even train at amateur level. Therefore, the Respondent has never been registered with them and no contract at all has ever existed.
8. Thus, the club L is of the opinion that the Respondent has had just cause to terminate his contract with the Claimant, due to his health problems, and that in any case, the basic principle of the club's joint liability does not exist, since the Respondent never signed any employment contract with it. Finally, the club L stressed that the Claimant has not at all corroborated that the Respondent had breached the employment contract.
9. The P Football Association confirmed that the Respondent had never been registered with the club L.
10. The Claimant contested the positions of the Respondent and the club L. In particular, it underlined that the Respondent never presented documents that could give any evidence for the alleged health problems. Moreover, the Claimant referred to the correspondence of the Respondent addressed to FIFA dated 5 December 2006, by means of which he asked to be authorized to sign a professional contract with a club of his choice. Moreover, the Claimant provided the relevant bank extracts in order to demonstrate that it had paid the amount of EUR 116,750 to the player between 7 December 2006 until 29 January 2007.
11. FIFA contacted the Respondent and the club L several times without, however, receiving any further statement.

## **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 4 March 2008. 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. 21 par. 1 and 2 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2008)
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 club and player.

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 lodged on 4 March 2008, the current version of the regulations (edition 2008; hereinafter: Regulations) is applicable to the matter at hand as to the substance.
4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. The members of the Chamber started by acknowledging that, on the one hand, the Claimant is requesting that the Respondent pays the amount of EUR 2,592,653 as compensation for the alleged breach of contract, plus 5% interest as from 28 December 2006 as well as that the club L shall be jointly and severally liable for such payment. In addition sporting sanctions should be imposed on the Respondent and all costs and expenses shall be paid by the Respondent. In particular, the Claimant contested that the Respondent had been registered as an amateur with the club L.
5. On the other hand, the Chamber duly noted that the Respondent rejects the claim of the Claimant. In particular, the Respondent is of the opinion that the Claimant has to prove that he had terminated the contract without just cause and that therefore it had suffered any damage. Moreover, the Respondent stressed that the Claimant had failed to pay him any remuneration since November 2006. Finally, the Respondent emphasised that he is no longer a member of organized football.
6. Moreover, the Chamber acknowledged that the club L also rejects the claim of the Claimant. In particular, the club L emphasised that it is an amateur club and that it had requested the registration of the Respondent as an amateur. However, the Respondent's state of health has made it impossible for him to even train at amateur level. Therefore, the Respondent has never been registered with them and no contract at all has ever existed.
7. Subsequently, the Chamber duly considered that it is uncontested by the parties that on 28 December 2006 the Respondent prematurely terminated the employment contract signed with the Claimant valid as from 29 January 2005 until 1 January 2008 and with an option until 30 June 2008.

8. Thereafter, the Chamber turned its attention to the question as to whether the Respondent had terminated the employment contract with just cause or without just cause, as claimed by the Claimant.
9. In this respect, the Chamber considered that the Respondent emphasised that his state of health forced him to terminate his sports activity, a fact that is contested by the Claimant. Equally, the Chamber noted that the Respondent stressed that the Claimant had failed to pay him any remuneration since November 2006.
10. In this respect, the Chamber stated that according to the legal principle of the burden of proof, which is a basic legal principle in every legal system, a party deriving a right from an asserted fact has the obligation to prove the relevant fact (cf. art. 12 par. 3 of the Procedural Rules). In particular, the Chamber emphasised that the Respondent never provided any documentary evidence to corroborate that his state of health forced him to terminate his sports activity and thus, would have entitled him to terminate the contract with just cause.
11. Also, the Chamber considered that the Claimant contested the allegations of the Respondent that it had failed to pay him any remuneration since November 2006 and provided the relevant bank extracts in order to demonstrate that it had paid to the Respondent the amount of EUR 116,750 between 7 December 2006 until 29 January 2007. In this respect, the Chamber took into account that although the Respondent had been invited to provide his position in this connection he never provided any further statement.
12. On account of the above, the Chamber concluded that the Respondent had no valid reason to terminate the contractual relationship with the Claimant and thus breached the employment contract signed with the Claimant without just cause. Therefore, the Chamber decided that the Respondent is liable to pay compensation to the Claimant in accordance with art. 17 par. 1 of the Regulations.
13. Having stated the above, the Chamber focussed its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years as well as the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period. The Dispute Resolution Chamber recalled that the list of objective criteria is not exhaustive and that the broad scope of

criteria indicated tends to ensure that a just and fair amount of compensation is awarded to the prejudiced party.

14. In this context, the members of the Chamber considered that the Claimant is requesting the amount of EUR 2,592,653 as compensation for the breach of contract calculated as follows: agreed remuneration for the Respondent during the year 2007, the amount of EUR 560,000 including match bonuses and for the period between January 2008 until June 2008 the amount of EUR 300,000 also including match bonuses, thus a total amount of EUR 860,000. In this regard, the Chamber took note that the Claimant paid the amount of EUR 800,000 to the Respondent's former club, thus the amortised transfer compensation amounts to EUR 343,000 (total duration of employment contract 3,5 years). The Claimant paid the amount of EUR 1,500,000 to replace the Respondent to the club G (copy provided of transfer agreement) as well as the amount of USD 100,000 as commission, amortised the amount of EUR 63,694. The Claimant paid the amount of EUR 20,000 as commission for the transfer of the Respondent, thus amortised the amount of EUR 8,571. The Claimant is deducting the amount of EUR 182,612 equivalent to the difference between the higher salary of the Respondent and the lower salary to the new player.
15. Equally, the Chamber took into account that the Respondent, born in November 1976, and the Claimant concluded an employment contract valid as from 29 January 2005 until 1 January 2008, with an option until 30 June 2008. According to the said contract the Respondent was entitled to receive for the year 2005 the amount of EUR 400,000 (plus EUR 100,000 match bonuses), for the 2006 the amount of EUR 440,000 (plus EUR 100,000 match bonuses), for the year 2007 the amount of EUR 460,000 (plus EUR 100,000 match bonuses), and for the year 2008 the amount of EUR 250,000 (plus EUR 50,000 match bonuses).
16. Moreover, the deciding authority noted that the P Football Association confirmed that the Respondent had never been registered with the club P and that the Respondent is no longer a member of organized football.
17. Having in mind that the Claimant and the Respondent had signed a fix term employment contract for a duration of 36 months and that the Claimant had paid the amount of EUR 800,000 as transfer compensation to the Respondent's former club and the amount of EUR 20,000 as commission for the transfer of the Respondent, the Chamber concluded that, amortised over the term of contract, the amounts of EUR 266,600 as well as EUR 6,600 are to be taken into consideration. Equally, the Chamber took into account that for the one year of contract that would have remained until the ordinary end of the term of the contract, a fix remuneration of EUR 460,000 was provided for as well as that the Respondent had ended his sports career.

18. In view of all of the above, the Chamber deemed that the total amount of EUR 733,200 is to be considered an appropriate and justified amount of compensation to be awarded to the Claimant.
19. In continuation, the Chamber recalled that the P Football Association had confirmed that the Respondent had never been registered with the club L. Congruously, the Chamber established that the club L cannot be held jointly and severally liable for the payment of the above-mentioned compensation.
20. Finally, the Chamber referred to art. 15 par. 3 of the Procedural Rules, which stipulates that no procedural compensation shall be awarded in proceedings of the Dispute Resolution Chamber and rejected the Claimant's claim in this respect.
21. In conclusion, the Dispute Resolution Chamber decided that the Respondent has to pay EUR 733,200 to the Claimant as compensation for the unjustified breach of his employment contract.

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

1. The claim of the Claimant, T, is partially accepted.
2. The Respondent, M, has to pay to the Claimant, T, the amount of EUR 733,200, **within 30 days** as from the date of notification of this decision.
3. Any further claims lodged by the Claimant, T, are rejected.
4. If the aforementioned sum is not paid within the aforementioned deadline interest of 5% p.a. as from expiry of the above-mentioned deadline until the effective date of payment will apply and the present matter shall be submitted, upon the parties request, to FIFA's Disciplinary Committee so that the necessary disciplinary sanctions may be imposed.
5. The Claimant, T, is directed to inform the Respondent, M, 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:

Court of Arbitration for Sport  
Avenue de Beaumont 2  
1012 Lausanne  
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For the Dispute Resolution Chamber:

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Markus Kattner  
Deputy Secretary General

Encl. CAS directives