Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 17 January 2014,

in the following composition:

Geoff Thompson (England), Chairman
Mario Gallavotti (Italy), member
Damir Vrbanovic (Croatia), member
Theo van Seggelen (Netherlands), member
Takuya Yamazaki (Japan), member

on the claim presented by the player,

A, from country S

as Claimant

against the club,

O, from country C

as Respondent

regarding an employment-related dispute arisen between the parties

I. Facts of the case
1. On 1 July 2010, the player, A, from country S (hereinafter: the Claimant), and the club O, from country C (hereinafter: the Respondent), signed an employment contract (hereinafter: the contract) valid as from the date of its signature until 31 May 2013.

2. According to the contract, the Claimant was to be remunerated with a total net amount of EUR 600,000, payable in 35 monthly instalments of EUR 17,143.

3. In addition, on 2 July 2010, the Claimant and the Respondent concluded an “image rights contract”, according to which the Respondent was to pay the Claimant a further net amount of EUR 700 for accommodation expenses as well as various bonuses depending on the Respondent’s and Claimant’s achievements.

4. On 8 January 2013, the Claimant lodged a claim before FIFA, indicating that the Respondent had terminated the contract without just cause on 4 August 2012, when it “decided not to hold him anymore”. Furthermore, the Claimant indicated that the Respondent failed to pay his salary and accommodation expenses for the months of May, June and July of the year 2012. As a consequence, the Claimant is claiming a compensation for breach of contract amounting to EUR 178,430, based on the remaining salary and accommodation expenses for the period of 1 August 2012 until 31 May 2013, as well as outstanding salary in the amount of EUR 53,529.

5. On 6 November 2013, the Respondent stated in its reply that, in addition to the employment contract and the image rights contract, the Respondent concluded a third agreement with the company S, a company which was involved in the recruitment and acquisition of the Claimant. Said agreement stipulates, amongst others, that if the Claimant reaches an agreement with the Respondent, the latter will pay to the company the amount of EUR 823,000.

6. According to the Respondent, the aforementioned agreement was not related to the employment of the Claimant. However, the Respondent stated that the agreement was made through the Claimant’s agents and the fees payable under this agreement went to the Claimant’s agents. Furthermore, the Respondent indicated that the employment relationship with the Claimant was terminated with mutual consent in July 2012. As a consequence of the termination, the Respondent negotiated with the player’s agents in order to settle the payment of salary and compensation. According to the Respondent, the Claimant’s agents tried to accumulate the Claimant’s remuneration with outstanding amounts owed to another player, X, as well as to the company S. The Respondent stated that it drafted a settlement agreement which was, however, not signed by the Claimant since he insisted that the amount owed to company S. should be paid first.
7. Subsequently, on 2 August 2012, the Respondent sent a letter to the Football Association from country C in which it separated the amounts owed to the Claimant and company S. Furthermore, the Respondent deposited a cheque in the amount of EUR 143,964 with the Football Association from country C, in view of the outstanding salary for the Claimant. The Respondent stated that, as a result, it had no other option than to terminate the employment relationship with the Claimant due to “unprofessional conduct and/or behavior” of the Claimant, i.e. knowingly trying “to thread [the Respondent] by linking company S with his salaries”, via a letter dated 4 August 2012 addressed to the Claimant. Finally, the Respondent held that, until 4 August 2012, all amounts are “paid in full and deposited with the Football Association from country C”.

8. The Claimant indicated that, on 14 August 2012, he signed an employment contract with the country S club, Z valid until 30 June 2014. According to this employment contract, the Claimant is to receive EUR 110,000 gross for the 2012/2013 season, payable in 11 monthly instalments of EUR 10,000.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as DRC or 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 8 January 2013. Consequently, the 2012 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: the Procedural Rules) is applicable to the matter at hand (cf. art. 21 par. 1 and par. 2 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 2012), 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 from and a club from.

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 2012), and considering that the present matter was submitted to FIFA on 8 January 2013, the 2012 edition of the aforementioned regulations (hereinafter: the Regulations) is applicable to the matter at hand as to the substance.
4. In continuation, with regard to the claimed payments in connection to the image rights agreement apparently signed by the parties, the Chamber also had to verify whether, for formal reasons, it was competent to deal with this specific component or not. In fact it remains that this part of the claim could possibly not be considered due to the Chamber lacking competence to deal with disputes related to image rights.

5. While analysing whether it was competent to hear this part of the claim, the Chamber, wished to highlight that said agreement contained elements which led to believe that it was not in fact an image rights agreement but rather a separate agreement to the employment contract, i.e. directly linked to the services of the Claimant as a player.

6. As a general rule, if there are separate agreements, the DRC tends to consider the agreement on image rights as such and does not have the competence to deal with it. However, such conclusion might be different if specific elements of the separate agreement suggest that it was in fact meant to be part of the actual employment relationship. In the case at hand, such elements appear to exist. In particular, the agreement contains inter alia stipulations regarding bonuses and accommodation expenses, which are typical for employment contracts and not for image rights agreements. Consequently, the Chamber decided not to consider the image rights agreement as such, but determined that said agreement was in fact an additional agreement to the employment contract instead.

7. In view of all the above, the Chamber established that the image rights agreement is to be considered, meaning that it is in a position to take it into consideration when assessing the Claimant’s claim.

8. The competence of the DRC and the applicable regulations having been established, the members of the Chamber entered into the substance of the matter, while emphasizing that, although having acknowledged all the above-mentioned facts, in the following considerations it will refer only to the facts, arguments and documentary evidence which it considered pertinent for the assessment of the matter at hand.

9. First of all, the DRC acknowledged that, on 1 July 2010, the Claimant and the Respondent had concluded an employment contract valid as from 1 July 2010 until 31 May 2013. As to the financial terms of said employment contract, the Chamber took note that it had been agreed upon between the parties that the Respondent would remunerate the Claimant with a total net amount of EUR 600,000, payable in 35 monthly instalments of EUR 17,143.

10. Equally, the DRC acknowledged that, on 2 July 2010, the Claimant and the Respondent had concluded an “image rights contract”, according to which the
Respondent was to pay the Claimant a further net amount of EUR 700 for accommodation expenses as well as various bonuses depending on the achievements of the Respondent and the Claimant.

11. The DRC further observed that the Claimant lodged a claim in front of FIFA against the Respondent indicating that the Respondent had terminated the contract without just cause on 4 August 2012, when it "decided not to hold him anymore". Furthermore, the Claimant indicated that the Respondent failed to pay his salary and accommodation expenses for the months of May, June and July of the year 2012.

12. Furthermore, the DRC observed that the Respondent, for its part, stated that, in addition to the employment contract and the image rights contract, the Respondent concluded a third agreement with company S. which, however, according to the Respondent, was not related to the employment of the Claimant. Equally, the Chamber noted that the Respondent indicated that, in July 2012, the parties had agreed upon the termination of the contract.

13. Likewise, the DRC noted that the Respondent stated that it had no other option than to terminate the employment relationship with the Claimant due to "unprofessional conduct and/or behaviour" of the Claimant, i.e. knowingly trying "to thread the club by linking company S. with his salaries" via a letter dated 4 August 2012 addressed to the Claimant.

14. In this context, the Chamber first referred to the principle of the burden of proof as stipulated in art. 12 par. 3 of the Procedural Rules, and stressed that the Respondent had not submitted any documentary evidence supporting its statement that the parties, in July 2012, had agreed upon the mutual termination of the contract. Therefore, the Chamber decided that there was no basis to conclude that the parties had indeed mutually agreed to prematurely terminate their employment relationship.

15. As a consequence, the Chamber acknowledged that it had to examine whether the reasons put forward by the Respondent could justify the termination of the contract in the present matter.

16. In this respect, the Chamber was eager to emphasise that only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to ensure the employee's fulfillment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an \textit{ultima ratio} measure.
17. In view of the above, the Chamber first of all observed that the Respondent did not substantiate its defence, as it did not present any documentary evidence that the Claimant had committed “unprofessional conduct and/or behavior”. The Respondent merely indicated that the Claimant “knowingly tried to threaten the Club by linking the company S with his salaries under the contracts to exercise undue pressure on the club.” In this respect, and once more referring to art. 12 par. 3 of the Procedural Rules, the Chamber stressed that the Respondent had not provided any evidence that the Claimant had indeed done so. However, for the sake of completeness, the Chamber emphasised that the Respondent had also failed to specify why exactly such conduct of the Claimant would be a valid reason to terminate the contract.

18. What is more, the Chamber pointed out that at the time the Respondent terminated the contract, it recognized that there was still salary outstanding, as can be established from the Respondent’s letter dated 4 August 2012.

19. On account of the above, the Chamber decided that the Respondent had no just cause to unilaterally terminate the employment relationship between the Claimant and the Respondent and, therefore, concluded that the Respondent had terminated the employment contract without just cause on 4 August 2012 and that, consequently, the Respondent is to be held liable for the early termination of the employment contract without just cause.

20. Bearing in mind the previous considerations, the Chamber went on to deal with the consequences of the early termination of the employment contract without just cause by the Respondent.

21. First of all, the members of the Chamber concurred that the Respondent must fulfill its obligations as per employment contract up until the date of termination of the contract in accordance with the general legal principle of “pacta sunt servanda”. Consequently, the Chamber decided that the Respondent is liable to pay to the Claimant the remuneration that was outstanding at the time of the termination, i.e. the amount of EUR 53,529, consisting of three monthly salaries of EUR 17,143 for May, June and July 2012 under the contract as well as three payments regarding the accommodation expenses of EUR 700 for May, June and July 2012 under the “image rights contract”. For the sake of completeness, the Chamber pointed out that the Respondent had failed to prove that (part of) the amount of EUR 143,964 it alleged to have paid to the Football Association of country C had, in turn, been paid to the Claimant.

22. In continuation, the Chamber decided that, taking into consideration art. 17 par. 1 of the Regulations, the Claimant is entitled to receive from the
Respondent compensation for breach of contract in addition to any outstanding salaries on the basis of the relevant employment contract.

23. In this context, the Chamber outlined that, in accordance with said provision, 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 Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

24. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

25. Subsequently, and in order to evaluate the compensation to be paid by the Respondent, the members of the Chamber took into account the remuneration due to the Claimant in accordance with the employment contract as well as the time remaining on the same contract, along with the professional situation of the Claimant after the early termination occurred. In this respect, the Chamber pointed out that at the time of the termination of the employment contract on 4 August 2012, the contract and the “image rights contract” would run for another 10 months, in which a total of ten installments were still to be paid. Consequently, taking into account the financial terms of the contract and the “image rights contract”, the Chamber concluded that the remaining value of the contract as from its early termination by the Respondent until the regular expiry of the contract amounts to EUR 178,430 and that such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.

26. In continuation, the Chamber remarked that following the early termination of the employment contract at the basis of the present dispute the Claimant had found new employment. On 14 August 2012, the Claimant signed an employment contract with the country S club, Z., valid until 30 June 2014 in accordance with which he would be remunerated with EUR 110,000 gross for the 2012/2013 season, payable in 11 monthly instalments of EUR 10,000 gross, i.e. the gross amount of EUR 100,000 for the period between August 2012 and May 2013. Consequently, in accordance with the constant practice of the Dispute Resolution Chamber and the general obligation of the Claimant to
mitigate his damages, such remuneration under the new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract.

27. In view of all of the above, the Chamber decided that the Respondent must pay the amount of EUR 78,430 to the Claimant as compensation for breach of contract without just cause, which is considered by the Chamber to be a reasonable and justified amount as compensation.

28. In conclusion, the DRC decided that the Respondent is liable to pay the total amount of EUR 131,959 to the Claimant, consisting of the amount of EUR 53,529 corresponding to the Claimant’s outstanding remuneration at the time of the unilateral termination of the contract without just cause by the Respondent and the amount of EUR 78,430 corresponding to compensation for breach of contract without just cause.

29. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

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III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, A, is partially accepted.

2. The Respondent, Club O, has to pay to the Claimant outstanding remuneration in the amount of EUR 53,529, within 30 days as from the date of notification of this decision.

3. The Respondent has to pay to the Claimant compensation for breach of contract in the amount of EUR 78,430, within 30 days as from the date of notification of this decision.

4. In the event that the aforementioned sums are not paid within the stated time limits, interest at the rate of 5% p.a. will fall due as of the date of expiry of the stipulated time limits and the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.

5. Any further claim lodged by the Claimant is rejected.
6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are 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. 67 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 hereeto. 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  
Switzerland  
Tel: +41 21 613 50 00 / Fax: +41 21 613 50 01  
e-mail: info@tas-cas.org  
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For the Dispute Resolution Chamber:

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Jérôme Valcke  
Secretary General

Encl. CAS directives