Decision of the
Dispute Resolution Chamber

passed in Zurich, Switzerland, on 30 July 2014,
in the following composition:

Thomas Grimm (Switzerland), Deputy Chairman
Johan van Gaalen (South Africa), member
Theodore Giannikos (Greece), member

on the claim presented by the player,

**Player Q**, from country P

as **Claimant**

against the club,

**Club K**, from country A

as **Respondent**

regarding an employment-related dispute arisen between the parties
I. Facts of the case

1. According to Player Q, from country P (hereinafter: the Claimant), on 1 July 2008, he and Club K, from country A (hereinafter: the Respondent), signed an employment contract (hereinafter: the first contract or the English contract) valid as from 24 July 2008 until 30 June 2009. The first contract was drafted on the letterhead of the club and was written in the English language.

2. In accordance with article 3 of the first contract, the Claimant was entitled to receive as remuneration the following amounts:
   a. USD 50,000 as “advance contract (the day of sign contract)“;
   b. USD 100,000 “as monthly salaries (10 months) for the period of the contract“;
   c. USD 50,000 to be paid in April 2009.

3. Furthermore, same article 3 provided that the Respondent would pay USD 40,000 “to the player's club for his transfer certificate“.

4. In this framework, on 26 November 2009, the Claimant lodged a claim against the Respondent in front of FIFA, asking for the total amount of USD 80,000 plus 5% interest as follows:
   a. USD 30,000 as outstanding salaries of April, May and June 2009;
   b. USD 50,000 for the amount due in April 2009.

5. In particular, the Claimant explained that the Respondent did neither pay the amount of USD 50,000 due in April 2009 nor the monthly salaries of April, May and June 2009. In this respect, the Claimant alleged that he sent four reminders to the Respondent requesting the outstanding payments, on 27 May 2009, 8 June 2009, 2 July 2009 and 30 October 2009, but none of them were answered.

6. In its reply to the claim, the Respondent disputed the existence of the first contract and asserted that the only contract concluded between the parties was signed on “11 August 2008” (hereinafter: the second contract or the language of country A contract). The second contract was valid as from 4 August 2008 until 30 June 2010, it was written in the country A language and was drafted on the letterhead of the Association of the Football Federations of country A.

7. According to article 5.1 of the second contract, the Claimant was entitled to receive as remuneration the monthly salary of 4,000 currency of country A. Moreover, the second contract was registered by the Association of Football Federations of country A on 11 August 2008.
8. In addition, the Respondent stated that it “ensured all its obligations before the player” for the period from August 2008 until July 2009. In this respect, the Respondent enclosed a document dated 29 January 2009, written in language of country A, which referred to payments of currency of country A 4,000 and which included a statement of the player in English, also dated 29 January 2009, in which the player indicated that “I don’t have another contract with Club K”.

9. Moreover, the Respondent asserted that in August 2009, the second contract was “repudiated by mutual agreement of the parties”.

10. On 2 March 2011, by means of an unsolicited correspondence, the Claimant reiterated that the Respondent owed him his salaries for April, May and June and the payment due in April 2009 all in the amount of USD 80,000. In this respect, the Claimant referred to the document dated 29 January 2009 and explained that on said date “all the payments were up to date”.

11. The Claimant further alleges that the contract was never repudiated by the parties but that it expired on 30 June 2009.

12. Furthermore, the Claimant stated that the Respondent made several payments in accordance with the first contract and, thus, this proves its existence. In this respect, he submitted an affidavit of Ms. E, allegedly his bank account manager for the time he was in country A, in which said manager stated, inter alia, that “In order to justify the cash inflows from country A, Club K, sent me by fax the English version of the employment contract signed between the club and my client, Player Q”, that “I checked that the monthly salary of my client was in the amount of 10,000 US dollars and that an amount of 50,000 US dollars should be paid on April 2009”, and that “The amounts related to April, May and June's 2009 salaries as well as the instalment due in April were not transferred to Player Q account”.

13. In continuation, the Claimant held that the existence of two versions of the contract, one in language of country A and the other in English, was a common practice in the Respondent. In this respect, he enclosed an affidavit of Mr. R, former player of the Respondent, in which the latter asserts, inter alia, that “all the players of the team, including [the Claimant] signed two employment contracts with the Club. One in language of country A and one in English. The financial clauses and payments were always made respecting the English version”.

14. In his replica, the Claimant stated that from the response of the Respondent “we can only confirm the existence of an employment contract executed between the parties” and reaffirmed all its arguments of the unsolicited correspondence. Furthermore, the Claimant held that the Respondent did not present any proof of payment of the claimed amounts.
15. In addition, the Claimant referred to a previous decision of the DRC also involving the Respondent and asked for this case to be decided “taking into consideration” the case between the player R and the Respondent.

16. In its duplica, the Respondent argued that the Claimant received his salary for the month of April 2009 and that it was not able to pay the salaries of May and June 2009 since the Claimant left the club, however, it further states that the salaries were “deposited by the accountancy of the club”.

17. Having been asked to do so, the Claimant failed to provide FIFA with an original copy of the English contract, since according to him, the Respondent refused to provide him with said original copy.

18. Nevertheless, the Claimant argued that there is sufficient evidence to prove that the parties did sign said employment contract. Firstly, the Claimant stresses that in the copy of the contract he provided, it can be seen at the bottom of each page that it was the Respondent itself who sent it to his bank since the latter required it to justify the cash inflows from country A.

19. In continuation, the Claimant asserts that in the employment contract it was agreed that the Respondent would pay to his former club, Club F, the amount of USD 40,000. In this respect, the Claimant enclosed to his submission a letter from Club F dated 7 August 2008, where the latter requested said amount to the Respondent “in order to give authorization for the issuance of the [ITC]”.

20. Furthermore, the Claimant enclosed his former contract with Club F, where he was earning a monthly salary of EUR 5,980. In this respect, the Claimant argues that according to the second contract, he was supposed to earn currency of country A 4,000 which is around EUR 3,750 and therefore “it is easy to conclude that any football player will play for a club more than 5000 km away of his own country for a lower salary…”. 

21. Despite having been asked to do so, the Respondent did not remit any further comments.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as the DRC or the Chamber) analysed whether it was competent to deal with the matter at stake. In this respect, it took note that the present matter was submitted to FIFA on 26 November 2009. Consequently, the 2008 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 of the 2008 and 2012 edition 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 and 2 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 decide on the present litigation, which concerns an employment-related dispute with an international dimension between a country P player and an country A club.

3. Furthermore, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber confirmed that in accordance with art. 24 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2009, 2010, and 2012), and considering that the claim was lodged on 26 November 2009, the 2009 edition of the aforementioned regulations (hereinafter: the 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, and entering into the substance of the matter, the Chamber started by acknowledging the above-mentioned facts as well as the documentation contained in the file. However, the Chamber emphasised that 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.

5. In this context, the members of the Chamber firstly noted that, whereas the Claimant insists that the parties concluded an English contract, valid as from 24 July 2008 until 30 June 2009, establishing remuneration in the amount of USD 200,000 per season, the Respondent refutes said allegation and stresses that the only valid employment contract concluded between the parties is the language of country A contract, valid as from 4 August 2008 until 30 June 2010, stipulating a monthly salary of currency of country A 4,000.

6. In view of the foregoing consideration, the members of the Chamber highlighted that the fundamental disagreement between the parties of the present dispute and, thus, the central issue in the matter at hand is whether the English contract, allegedly signed between the parties, constitutes a valid and binding contract.

7. At this point, the DRC deemed it appropriate to remind the parties of the legal principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right from an alleged fact shall carry the respective burden of proof. In the present case, this means that the Claimant bears the burden of demonstrating the validity of the English contract for the parties, in view of the fact that the Respondent contests its existence.

8. In this respect, the members of the Chamber began by acknowledging that the Claimant expressly admitted being unable to provide the relevant employment contract in its original form. Therefore, the Chamber held that the fact the Claimant
had only submitted a copy of the disputed contract was insufficient to establish the existence of the English contract.

9. Nevertheless, the Chamber noted that in order to prove his allegations concerning the existence of the English contract, the Claimant presented the following argumentation:

   a. That in the copy of the contract he provided, it can be seen at the bottom of each page that it was the Respondent itself which sent it to his bank since the latter required it to justify the cash inflows from country A. In this respect, the Claimant enclosed a statement from Ms. E, allegedly his bank account manager for the time he was in country A, in which said manager states that the Respondent sent to her the English contract and that “the monthly salary of my client was in the amount of 10,000 US dollars”;

   b. that in the employment contract it was agreed that the Respondent had to pay to his former club, Club F, the amount of USD 40,000. In this respect, the Claimant enclosed to his submission a letter from Club F dated 7 August 2008, where the latter requested said amount to the Respondent “in order to give authorization for the issuance of the [ITC]”;

   c. that in his former club, Club F, he was earning a monthly salary of EUR 5,980. In this respect, the Claimant argues that according to the language of country A contract, his salary was of currency of country A 4,000 only, which is around EUR 3,750 and therefore “it is easy to conclude that any football player will play for a club more than 5000 km away of his own country for a lower salary...”.

10. In this respect, after having carefully taken into consideration all the arguments of the Claimant and while recalling that all documentation shall be considered with free discretion, the DRC was of the unanimous opinion that the evidence and arguments presented by the Claimant were insufficient in order to prove with certainty that the English contract was, in fact, concluded and executed between the parties.

11. In this order of ideas and while bearing in mind the Claimant’s statement in respect that in January 2009 “all the payments were up to date”, the members of the Chamber were of the opinion that it was rather simple for the Claimant to provide factual evidence that could have proven that he actually received any of the amounts established in the English contract, such as his bank statements or any kind of receipt. In other words, and since the payments were apparently made to the player’s bank account in country P, the Chamber failed to understand why the Claimant did not provide his bank statements for the period between 24 July 2008 until April 2009, which should indicate that prior to April 2009, he indeed received the amount of USD 10,000 per month.

12. In respect of the affidavit of Ms. E, the Chamber was eager to emphasize that the information contained in a personal statement is of mainly subjective perception and
might be affected by diverse contextual factors; therefore, the credibility of such type of documentation is rather limited. Consequently, the Chamber deemed that the statement of the Claimant's so called bank manager mentioned above is unfit to establish the validity of the English contract. This argumentation also applies to the affidavit of Mr. R.

13. As conclusion, in view of all the aforementioned considerations and of the fact that no original version of the English contract was provided, the members of the Chamber deemed that the Claimant was not able to prove the existence of the English contract. Consequently and since the Claimant's claims are based on said contract only, the members of the Chamber decided to reject the claim of the Claimant in its entirety.

III. Decision of the Dispute Resolution Chamber

The claim of the Claimant, Player Q, is rejected.

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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 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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Tel: +41 21 613 50 00
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For the Dispute Resolution Chamber:

Jérôme Valcke
Secretary General

Encl. CAS directives