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 W, from country T

as Claimant

against the club,

Club A, from country U

as Respondent

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


2. According to Addendum B of the contract, the Claimant was entitled to a monthly remuneration of USD 5,000 during the 2008 season.

3. Article 13 of the contract stipulates that “(a) the parties agree that all disputes relating to or arising out of this Contract or the Player’s relationship with the Club or League including, but not limited, disputes related to compensation, benefits, discipline, or the termination of this Contract shall be presented to the Commissioner of the League, pursuant to the League Bylaws for final decision by the league. (b) If either the Player or the Club is dissatisfied with the decision of country U Football League as referenced in subsection 13(a), above, it may serve notice of a demand for binding arbitration on the other party within seven (7) calendar days of the receipt of the league’s decision. The League Office must be copied on any decision to do so within the prescribed time frame. Arbitration shall consist of a single arbitrator system utilizing the rules of the country U Arbitration Association and the decision shall be final and not subject to appeal to a court of law (...). (c) The Player and the Club agree if either of them brings an action in any court of law or other forum to enforce rights hereunder without first exhausting their remedies under subparagraph (a) herein, such action shall be barred as a result of the remedy provided in subparagraph (a) above (...)."

4. The Claimant lodged a claim in front of FIFA against the Respondent on 3 June 2008. The Claimant requests compensation for breach of contract in the amount of USD 35,000 plus 5% interest.

5. In this regard, the Claimant explains that he travelled to country T at the end of the 2007 season and was scheduled to return to country U for training on 28 March 2008. However, the Claimant was allegedly informed by phone on 25 March 2008 that he was released by the Respondent. The Respondent then sent the Claimant a letter on 7 April 2008, stating that it had decided not to retain his services any longer.

6. On account of the above-mentioned circumstances, the Claimant claims that the contract was terminated by the Respondent without just cause. Therefore, the Claimant requests to be paid compensation corresponding to the seven monthly salaries of USD 5,000 that he would have been entitled to for the 2008 season, which ran from April to October.

7. By means of a correspondence dated 2 April 2009 and clarifications provided on 30 April and 13 May 2009, the country U Football Federation informed FIFA that the Respondent had withdrawn from its member league, country U Football League, and was therefore no longer affiliated to its federation.
8. On 2 June 2009, FIFA informed the Claimant and the country U Football Federation that on account of the Respondent’s loss of affiliation, it was not in a position to further pursue with the investigation of the matter.

9. On 19 May 2011, the Claimant claimed that the Respondent was again taking part in a competition under the auspices of the country U Football Federation, i.e. the country U Football League. On account thereof, the Claimant insisted that the Respondent did not cease to exist but merely suspended its activities for a certain period. Therefore, since the Respondent is duly affiliated to the country U Football Federation, the Claimant requests that a decision be rendered.

10. In this respect, the Claimant inter alia refers to an article published on the Respondent’s official website, which reads “after a two-year hiatus, the Club A return to the field in 2011 as a part of the newly formed country U Football League”. Moreover, the Claimant quotes a press announcement, dated 28 November 2008, in which the Respondent stated that “due to the state of the economy and the potential of an MLS Team coming to town, the men’s pro team has decided to sit the year out while the Club A assess the landscape”.

11. Furthermore, the Claimant referred to official documentation relating to the constitution and existence of the company running the Respondent, Club A LLC. In particular, the Claimant provided evidence that the company Club A Men LLC had been constituted on 12 September 2005. He also submitted a company registry extract which, in his view, indicates that the company renewed its company registration on 12 March 2009 since such date appears as “Last Annual Registration Filed”. In particular, the Claimant insists that the latter document suggests that the company running the Respondent did not cease to exist after the 2008 season since the company remained active in 2009 as well. Finally, the Claimant makes reference to an internet article dated 30 December 2006 which inter alia indicates that a Mr J is the owner of the men’s team in the country U Football League.

12. In its reply, the Respondent maintained that “the Franchise of the Club A operating as part of the 2008 country U Football Leagues, which is and was a country U league also affiliated with the country U Football Federation, was terminated in 2008. The current Franchise of the Club A is a new Franchise with the same name and marks. As the new Franchise is not who compensation is being sought from, we consider this no longer a matter of our Franchise”. In this regard, the Respondent submitted a copy of the letter, dated 24 November 2008, by means of which the country U Football League informed it that in view of its failure to notify its intent to participate in the 2009 country U Football League First Division, its Franchise with the said league was terminated.

13. Upon a further invitation to provide documentation in support of its position as well as adding comments as to the substance of the present affair, the Respondent reiterated that it was a different club and company than the one which competed in the country U Football League. The previous Club A allegedly went out of business following the 2008 season and new owners “brought back the team in name only starting in 2011, playing in the country U Football League”. The current Club A
therefore requests the DRC to reject the Claimant’s claim against it, as it allegedly did not have a contract with the Claimant.

14. The country U Football Federation confirmed that the Respondent had lost its affiliation through the letter of the country U Football League dated 24 November 2008. Subsequently, the Club A was part of the country U Football Federation’s application to become a member of the country U Football Federation in 2009 as well as 2010. The later application was approved by the country U Football Federation on 11 February 2011. The country U Football Federation submitted a copy of the successful application, according to which the Club A would be part of the country U Football League and owned at 65% by Traffic and 35% by Club A LLC, an entity which is owned at 80% by Mr J and 20% by Mr L.

15. In addition, the country U Football Federation deemed fit to clarify that clubs are not directly members of the country U Football Federation but only gain affiliation to the federation through the league to which they belong. Finally, the country U Football Federation maintained that it was not aware as to whether the current Franchise is the legal successor of the old Franchise which used to compete in the country U Football League.

16. Upon such request by FIFA, the Claimant stated that after the termination of the contract by the Respondent, he signed a contract with the country T club, Club N, for a period of four months and a monthly remuneration of 5,000 currency of country T, equivalent to USD 800.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as Chamber or DRC) 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 3 June 2008. Consequently, the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (edition 2005; hereinafter: the Procedural Rules) are applicable to the matter at hand (cf. article 21 par. 1 and 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 conjunction 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 country U player and a club from the country U.

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 (editions 2012, 2010 and 2009), and considering that the present claim was lodged on 3 June 2008,
the 2008 edition of said 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. At this stage, the Chamber decided to concentrate in a first instance on the argumentation put forward by the Respondent according to which it does not have standing to be sued. In this regard, the Respondent states that the Club A which currently exists is different from the club with which the Claimant signed the contract and, therefore, the current entity is not from whom compensation is requested by the Claimant.

6. In this respect, the members of the Chamber took due note that it is established and uncontested that the Respondent had participated in a league called country U Football League until 2008, then lost its affiliation to the country U Football Federation because it did not apply to compete in the country U Football League or any other league for the 2009 season. These facts are corroborated by the letter issued by the country U Football League dated 24 November 2008 as well as the confirmations provided by the country U Football Federation.

7. As regards the subsequent events, the members of the Chamber first concentrated on the documentation provided by the Claimant indicating that the company running the Respondent, Club A LLC, apparently remained existent after 2008. The Chamber also noted the press releases to which the Claimant referred and which indicated that the Respondent had the intention to start competing again after a certain period. The Chamber then noted that, according to the Claimant, the Respondent started competing in a league called country U Football League as of the 2011 season and therewith maintained that the Respondent regained affiliation at the country U Football Federation. On this basis, the Claimant requests the FIFA DRC to render a decision in the present matter.

8. The Respondent, for its part acknowledges that the Club A started competing in the country U Football League as of the 2011 season, but insists that the club with which the Claimant signed the contract went out of business and only the name has been taken over by the new owners of the alleged new entity.

9. In continuation, reverting to the information provided by the country U Football Federation, the Chamber took note that the Club A are a member of the country U Football League, the constitution of which was approved on 11 February 2011. Equally, within the scope of the country U Football League's application to become a
member of the country U Football Federation, the Chamber observed that the Club A were owned partially by Club A LLC and Mr J. In addition, the Chamber observed that, as stated by the country U Football Federation, clubs gain affiliation to the federation through the league to which they belong.

10. On account of the above-mentioned circumstances, the Chamber was able to conclude, in particular based on the information provided by the country U Football Federation, that the Club A were affiliated to the country U Football Federation for the 2008 season, lost affiliation for the 2009 and 2010 seasons, before regaining affiliation for the 2011 season as the club took part in the country U Football League.

11. Having established the above, the Chamber then examined whether the Club A which are currently affiliated to the country U Football Federation are the same club than the one that was affiliated to the country U Football Federation until 2008 and which concluded the contract with the Claimant. In this context, referring to art. 12 par. 3 of the Procedural Rules, the Chamber emphasised that the burden of proof to corroborate its allegation that the current Club A was not the entity from which compensation was being requested lied on the club itself. In consideration of the stated principle, the Chamber deemed that the club’s assertions remained mere allegations without being corroborated by any documentary evidence. Therefore, and in combination with the fact that the club’s assertions have not been confirmed by the country U Football Federation, the Chamber determined that the relevant argumentation had to be rejected. Furthermore, upon examination of the entire information at its disposal, the Chamber was of the opinion that there is no indication that the club which is currently affiliated to the country U Football Federation can be considered as a different and new entity. To the contrary, the Chamber deemed that the documentation submitted by the Claimant rather suggested that, not only has the club kept the same name but it also appears to be run by the same company and be held, at least partially, by the same owners. This latter aspect is corroborated by the fact that the pertinent documents indicate that Club A and Mr J ran and owned the club, at least partially, both prior to the loss of affiliation and after the club regained affiliation in 2011.

12. On account of the above, the Chamber determined that the entire argumentation submitted by the Respondent was to be rejected and that it could pursue with the analysis of the merits of the present matter.

13. In this context, the Chamber took into account that it is uncontested that the contract was concluded between the parties on 13 June 2007 and valid from 30 May 2007 until 30 October 2008. Equally uncontested is the fact that the contract was terminated in writing by the Respondent by means of the correspondence dated 7 April 2008 in which the latter informed the Claimant of its decision not to retain his services any longer. On account of these circumstances, the Claimant stated that the club had no justification to terminate the contract as such and requested the amount of USD 35,000 as compensation, corresponding to the residual value of the contract.
14. The DRC highlighted that the central issue in the matter at stake would be, thus, to determine as to whether the Respondent had a just cause to terminate the contract at the time it addressed the termination notice to the Claimant on 7 April 2008.

15. In this respect, the Chamber was eager to emphasise that, in accordance with its constant and well-established jurisprudence, 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 may a contract be terminated prematurely and without just cause. Hence, if there are more lenient measures which can be taken in order for an employer to ensure the employee’s fulfilment 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 *ultima ratio* measure.

16. In view of the above, the Chamber outlined that the Respondent never complained of any wrongdoing by the player, neither in its termination notice nor during the investigation of the present matter. In fact, it did not invoke any reason to justify the termination of the employment contract.

17. On account of the foregoing considerations, the Chamber determined 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 7 April 2008. Consequently, the Respondent is to be held liable for the early termination of the employment contract without just cause.

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

19. In continuation, assessing the claim of the Claimant which is for compensation only, 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.

20. 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.
21. 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.

22. 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 7 April 2008, the contract was due to run for another 7 months. Consequently, taking into account the financial terms of the 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 USD 35,000 and that such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.

23. In continuation, the Chamber remarked that following the early termination of the employment contract at the basis of the present dispute the Claimant found new employment with the country T club, Club N, for a period of four months and a total remuneration of currency of country T 20,000, equivalent to USD 3,200. Consequently, in accordance with the general obligation of the Claimant to mitigate 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.

24. In view of all the above, the Chamber decided that the Respondent must pay the amount of USD 31,800 to the Claimant as compensation for breach of contract with just cause, which is considered by the Chamber to be a reasonable and justified amount as compensation.

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

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player W, is partially accepted.
2. The Respondent, Club A, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of USD 31,800 plus 5% interest *p.a.* on said amount as from 3 June 2008 until the date of effective payment.

3. In the event that the above-mentioned amount plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

4. Any further claim lodged by the Claimant is rejected.

5. The Claimant is directed to inform the Respondent 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. 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
Switzerland
Tel: +41 21 613 50 00 / Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the Dispute Resolution Chamber:

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Jérôme Valcke
Secretary General

Encl.: CAS directives