Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 20 August 2014,

in the following composition:

**Thomas Grimm (Switzerland)**, Deputy Chairman
**Theo van Seggelen (Netherlands)**, member
**Taku Nomiya (Japan)**, member

on the claim presented by the player,

**Player F**, from country A

as **Claimant / Counter-Respondent**

against the club,

**Club O**, from country C

as **Respondent / Counter-Claimant**

with the club,

**Club L**, from country S

as **Intervening Party**

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

1. On 24 June 2008, Player F, from country A (hereinafter: player or Claimant/Counter-Respondent) and Club O, from country C (hereinafter: club or Respondent/Counter-Claimant) signed an employment contract valid as from the date of signature until 31 May 2011 (hereinafter: June 2008 contract).

2. In accordance with the June 2008 contract, the player was entitled to receive inter alia the following remuneration:
   a. EUR 100,000 net in 12 monthly instalments of EUR 8,333 each as from 30 June 2009;
   b. EUR 100,000 net in 12 monthly instalments of EUR 8,333 each as from 30 June 2010;
   c. Accommodation in the monthly amount of EUR 700 max.

3. The June 2008 contract further includes a 60 days’ grace period for the club to pay the player’s remuneration.

4. On 31 January 2010, the club and the player signed a “mutual termination contract”, in accordance with which the June 2008 contract was terminated and the club acknowledged that it does not owe any money as salary, bonus, compensation, or anything else, except for the amount of EUR 20,833 which would be paid to the player “each month until 31 May 2010”.

5. On the same day, the parties signed an “Agreement” relating to the termination of the June 2008 contract by mutual consent, in accordance with which the June 2008 contract was terminated in order to facilitate the loan of the player to Club A until 31 May 2010.

6. According to this agreement, after expiry of the player’s contract with Club A, the player will return to the club with a new contract starting on 1 June 2010 and valid until 31 May 2011, with the same terms and conditions as the conditions included in the June 2008 contract.

7. This agreement further specifies that the club will pay the amount specified under number 3 of the aforementioned mutual termination contract. In addition, this agreement stipulates that the player’s salary for December 2009 and January 2010 in the amount of “2 x 19,833” will be paid by the club to the player until the end of February 2010.
8. On 1 February 2010, the player and Club A, signed an employment contract valid until 30 May 2010, in accordance with which the player was entitled to receive from Club A EUR 500 per month as of 28 February 2010 until 31 May 2010.

9. The player and the club signed another employment contract, dated 1 June 2010, valid as from 1 June 2010 until 31 May 2011, in accordance with which the player was to receive EUR 100,000 net in 12 monthly instalments of EUR 8,333 each, payable as from 30 June 2010.

10. In accordance with this employment contract, the player was to be present in country C in order to start his employment on 1 June 2010.

11. On 3 February 2010, the player and his agent allegedly terminated their cooperation with immediate effect.

12. On 20 May 2010, this agent received a fax from the club in which it informed the agent that the player was to present himself for training on 1 June 2010.

13. On 2 June 2010, said player’s agent received another fax from the club stating that the player had not appeared at training and insisting that the player presents himself on 4 June 2010 at 9 a.m. the latest.

14. By fax dated 4 June 2010 addressed to the same player’s agent, the club terminated the employment contract due to the player’s absence in spite of its warnings.

15. On 7 August 2010, the player signed an employment contract with Club L, from country S, valid as from 19 August 2010 until 31 May 2011, in accordance with which the player was to receive a monthly remuneration of currency of country S 3,800.

**Claim of the player**

16. On 26 October 2010, with a subsequent amendment on 6 March 2011, the player lodged a petition against the club in front of FIFA claiming payment of outstanding remuneration and compensation for breach of contract without just cause in the total amount of EUR 145,466, which was detailed as follows:
   a. EUR 16,666 net (2 X EUR 8,333) for outstanding salaries for April and May 2010;
   b. EUR 1,400 (2 x EUR 700) for outstanding rental payments for April and May 2010;
   c. EUR 100,000 remuneration for the 2010-11 season;
   d. EUR 8,400 for rental payments during the 2010-11 season;
e. EUR 12,000 compensation for expenses due to unexpected move;
f. EUR 7,000 compensation for his representative’s fees.

17. He further asks that sporting sanctions be imposed on the club.

18. The player explains that as early as in January 2009 the club demonstrated that it was not any longer interested in his services and tried to pressure him in agreeing to put an end to their contractual relation, which pressure allegedly was increased in July 2009. The club further allegedly was always in two months’ delay of the payment of his salary without valid reason.

19. In January 2010, it was agreed that the player would transfer on a loan basis to Club A until 31 May 2010, after which time the player was to return to the club. According to the player, this was under the condition that the club would pay the salaries that were outstanding at that time and that the club would continue to pay his salary during his loan at Club A.

20. Referring to the aforementioned notices from the club addressed to the agent, the player alleges that, prior to receipt of the club’s fax of 20 May 2010, the agent had already informed the club that he was no longer representing the player.

21. The player alleges that he was informed by the agent of the contract termination on 4 June 2010, at which time he was still on vacation with the club’s approval, who had informed him that training would start on 9 June 2010. Furthermore, the player points out that he never received any notice from the club informing him that the starting date of training had changed to 1 June 2010. In addition, on 4 June 2010, the player authorised the agent again to act on his behalf in this matter.

22. According to the player, at the time of the termination of the contract by the club, his salaries for April and May 2010 were yet to be paid by the club.

Club’s reply to the claim and counterclaim

23. The club rejects all of the player’s allegations and submits that it terminated the contract with just cause.

24. As regards the player’s statements relating to the period of time prior to his transfer on a loan basis, the club holds that it paid the player’s remuneration in accordance with the contractual 60 days’ grace period. The club further submits that the player had not shown professional behaviour.
25. The club asserts that the employment contract dated 1 June 2010 and the termination agreement relating to the June 2008 contract were simultaneously signed. Referring to the pertinent contractual clause in the employment contract dated 1 June 2010, the club asserts that the player was well aware of the fact that he should have returned to the club on 1 June 2010.

26. With respect to its correspondence sent to the player via his agent following the expiry of the player’s loan period, including the notice of termination, the club points out that it never received any information that the player had ended his cooperation with the agent or about a change of address.

27. The club submits that, on 4 June 2010, it received a fax from the player’s agent contesting the contract termination and pointing out that the player was on vacation after the end of the season. However, according to the club, the player never returned after he had already been released by Club A on 17 May 2010. The club adds that the player knew as early as in January 2010 that he was to return to the club on 1 June 2010, which he failed to do in spite of the club having put him in default.

28. Furthermore, the club was contacted by Club T, from country S on 4 June 2010, asking it to approve test trainings with the player, “who is signed under your contract”. According to the club, this shows that the player and his agent were in negotiation with other clubs for the player’s transfer to another team.

29. As regards the player’s financial claim, the club admits that it owes the amount of EUR 16,666 to the player for outstanding salaries and EUR 1,400 for unpaid rent relating to April and May 2010.

30. For these reasons, the club holds that it terminated the employment contract with just cause and asks that the player be ordered to pay the amount of EUR 343,000 to the club in compensation, which amount represents the amount it paid to the player’s former club, Club G (country S) on the occasion of his transfer to the club. In addition, the club asks that the player be ordered to pay procedural costs and legal expenses.

Player’s reply to counterclaim:

31. The player rejects the club’s counterclaim and asserts that since he was aware of the tense relation with the club, he would not have acted in a way that would have allowed the club to put an end to his contract. The player considers that, whereas the season started on 1 June 2010, the first day of training does not necessarily start on that day, in his case training started on 9 June 2010. The
player deems that every player is entitled to vacation after the end of the season and he asserts that the club’s team manager had granted vacation until 9 June 2010.

32. The player submits that prior to the termination of his contract by the club, the latter had not taken any other measures such as the imposition of a fine, which would have been a first step to take should the club have had a reason to do so.

33. The player denies that he was looking for another club and explains that he was quite well-known within the country S super league and that clubs have shown interest in him, whereas he wished to continue his contract with the club.

Club’s final position:

34. The club rejects the allegations of the player and insists that he already knew on 31 January 2010 that he had to return to the club on 1 June 2010. Should the player have had doubts as regards the club’s intentions with respect to his employment contract, he should have sent a letter to the club enquiring about the date on which training resumed.

35. The club further highlights that it is well known to the club’s players and officials that training for players who are not part of the first 11 squad starts in the first week of June, whereas for the other players training starts in the second week of June.

36. In addition, reverting to the player’s argument that the club should have first imposed a fine, the club highlights that the player had not responded to any of its letters and never asked for an extension to return to country C. According to the club, the player did not act in a way so as to avoid a termination of the contract.

37. The club further refers to a DRC decision in which it was stated that the player’s absence without authorisation or just cause is to be considered as an unjustified breach of contract by the player.

38. Therefore, the club maintains its counterclaim.

Position of Club L:

39. Club L holds that it has not induced the player to a breach of contract and explains that the player contacted Club L spontaneously and he had indicated that he was not contractually bound to any club, which was confirmed by his agent. The player had indicated that he had not been paid by his previous club.
40. Club L further deems that should the player have been contractually bound to the country C club, the latter would surely have contacted Club L, either prior to or after the registration of the player with Club L.

41. All in all, Club L deems that it has no interest in this matter and that no reproach can be made against it.

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 matter at hand. In this respect, it took note that the present matter was submitted to FIFA on 26 October 2010. Consequently, the Rules governing the procedures of the Players’ Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: Procedural Rules) are 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 and par. 2 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2014) the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an country A player and a country C club and involving a country S 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 2014), and considering that the present claim was lodged on 26 October 2010, the 2010 edition of said regulations (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. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. 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. The members of the Chamber took note that the Claimant/Counter-Respondent, on the one hand, maintains that the Respondent/Counter-Claimant had no just cause to terminate the employment contract on 4 June 2010 and that therefore, the Respondent/Counter-Claimant is to be held liable for the early termination of the employment contract and payment of, *inter alia*, compensation in addition to allegedly outstanding remuneration.

6. The Chamber further noted that the Respondent/Counter-Claimant, for its part, rejected the claim and held that it terminated the employment contract with just cause on 4 June 2010 on the basis of the unauthorised absence of the Claimant/Counter-Respondent at the start of the new sporting season, on the basis of which it lodged a counterclaim against the Claimant/Counter-Respondent asking, *inter alia*, that the latter be held liable to pay compensation for breach of contract to the Respondent/Counter-Claimant.

7. Considering the diverging position of the parties with regard to the question as to which party is liable for the early termination of the pertinent employment contract, the members of the Chamber highlighted that the central issue in this dispute was to determine as to whether the Respondent/Counter-Claimant had terminated the employment contract on 4 June 2010 with or without just cause as well as to decide on the consequences thereof.

8. Subsequently, the Chamber proceeded with an analysis of the circumstances surrounding the present matter, the parties' arguments as well the documentation on file, bearing in mind art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.

9. In this respect, the Chamber first turned its attention to the main argument invoked by both the Claimant/Counter-Respondent and the Respondent/Counter-Claimant in their claims that the employment contract was terminated on 4 June 2010 without and with just cause, respectively, *i.e.* the allegedly unauthorised absence of the player at the club as of 1 June 2010.

10. According to the Claimant/Counter-Respondent, on 1 June 2010, he was on vacation with the approval of the Respondent/Counter-Claimant, until 9 June 2010, and he was never informed of any change of the date on which training would resume.

11. The Respondent/Counter-Claimant refuted that the player was authorised to return to the club on 9 June 2010 only and emphasised that the employment contract clearly stipulates 1 June 2010 as the date on which the Claimant/Counter-
Respondent had to report to the club and that it had reminded the Claimant/Counter-Respondent to return on 1 June 2010.

12. In this regard, the Chamber noted that the Claimant/Counter-Respondent had not presented any written evidence in support of his allegation that he was absent with the Respondent/Counter-Claimant’s approval as from 1 June 2010 until 9 June 2010.

13. In view of the above, the Chamber went on to deliberate as to whether the player’s unauthorised absence as of 1 June 2010, which is invoked by the Respondent/Counter-Claimant as the ground for the unilateral termination of the employment contract, can be considered as a just cause for the Respondent/Counter-Claimant to prematurely terminate the employment contract on 4 June 2010.

14. In this respect, the members of the Chamber referred to the Chamber’s well-established jurisprudence in accordance with which a few days’ absence could not constitute, per se, a valid reason for the termination of an employment contract. Only a breach or misconduct which is of certain severity would justify 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 assure 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.

15. With this in mind, the Chamber was of the opinion that the objective circumstances on 4 June 2010 did not allow the Respondent/Counter-Claimant to prematurely terminate the employment contract with the Claimant/Counter-Respondent, since there would have been more lenient and proportionate measures to be taken (e.g., among others, the imposition of a fine) in order to assure the player's fulfilment of his contractual duties.

16. For the sake of good order, at this point, the members of the Chamber wished to highlight that the DRC decision referred to by the Respondent/Counter-Claimant in its argumentation was based on the absence of a player without valid reason during 3 months.
17. On account of the above, the Chamber concluded that the Respondent/Counter-Claimant had no just cause to unilaterally terminate the employment contract on 4 June 2010 and, therefore, decided that the Respondent/Counter-Claimant is to be held liable for the early termination of the employment contact without just cause.

18. At the same time, the members of the Chamber rejected the counterclaim of the Respondent/Counter-Claimant.

19. 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/Counter-Claimant.

20. First of all, the members of the Chamber concurred that the Respondent/Counter-Claimant must fulfil 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/Counter-Claimant is liable to pay to the Claimant/Counter-Respondent the remuneration that was outstanding at the time of the contract termination i.e. the amount of EUR 18,066, consisting of two monthly salaries and rental payments for April and May 2010, which amount was acknowledged as due to the Claimant/Counter-Respondent by the Respondent/Counter-Claimant.

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

22. Subsequently, the Chamber focused 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 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.
23. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contains a provision by means of which the parties had beforehand agreed upon an amount of 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.

24. As a consequence, the members of the Chamber determined that the amount of compensation in the present matter had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body. In this regard, the Dispute Resolution Chamber emphasised beforehand that each request for compensation for contractual breach has to be assessed by the Chamber on a case-by-case basis taking into account all specific circumstances of the respective matter.

25. In order to estimate the amount of compensation in the present case, the members of the Chamber first turned their attention to the remuneration and other benefits due to the Claimant/Counter-Respondent under the existing contract and/or the new contract, which criterion was considered by the Chamber to be essential. The members of the Chamber deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows the Chamber to take into account both the existing contract and the new contract, if any, in the calculation of the amount of compensation.

26. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract for the remaining duration until 31 May 2011 and concluded that the Claimant/Counter-Respondent would have received a total remuneration of EUR 100,000. In this context, and bearing in mind the claim of the Claimant/Counter-Respondent, the members of the Chamber emphasised that the pertinent employment contract dated 1 June 2010 does not include any accommodation benefits for the player.

27. In continuation, the Chamber verified as to whether the Claimant/Counter-Respondent had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in
the calculation of the amount of compensation for breach of contract in connection with the player’s general obligation to mitigate his damages.

28. Indeed, on 7 August 2010, the Claimant/Counter-Respondent signed an employment contract with the Club L, from country S, valid as from 19 August 2010 until 31 May 2011, in accordance with which the Claimant/Counter-Respondent was entitled to receive the total amount of approximately EUR 26,125.

29. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand as well as the Claimant/Counter-Respondent’s general obligation to mitigate his damage, the Chamber decided that the Respondent/Counter-Claimant must pay the amount of EUR 73,875 to the Claimant/Counter-Respondent as compensation for breach of contract in the case at hand.

30. In addition, as regards the claimed legal expenses, the Chamber referred to art. 18 par. 4 of the Procedural Rules as well as to its long-standing and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber. Consequently, the Chamber decided to reject the Claimant/Counter-Respondent’s request relating to legal expenses.

31. The members of the Chamber concluded their deliberations on the present matter by rejecting any further claim lodged by the Claimant/Counter-Respondent.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant/Counter-Respondent, Player F, is partially accepted.

2. The counterclaim of the Respondent/Counter-Claimant, Club O, is rejected.

3. The Respondent/Counter-Claimant has to pay to the Claimant/Counter-Respondent outstanding remuneration in the amount of EUR 18,066 within 30 days as from the date of notification of this decision.

4. The Respondent/Counter-Claimant has to pay to the Claimant/Counter-Respondent compensation for breach of contract in the amount of EUR 73,875 within 30 days as from the date of notification of this decision.
5. In the event that the amounts due to the Claimant/Counter-Respondent are not paid by the Respondent/Counter-Claimant within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

6. Any further claim lodged by the Claimant/Counter-Respondent is rejected.

7. The Claimant/Counter-Respondent is directed to inform the Respondent/Counter-Claimant 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 article 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
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1012 Lausanne
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For the Dispute Resolution Chamber:

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Jérôme Valcke
Secretary General

Encl. CAS directives