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,

X, from country A

as Claimant

against the club,

Club Y, from country S

as Respondent

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

1. On 15 August 2010, the player X from country A (hereinafter: the Claimant) and the Club Y from country S (hereinafter: the Respondent) concluded an employment contract (hereinafter: the contract) valid as from the date of signature until 14 August 2013.

2. According to the contract, the Claimant was entitled to receive as remuneration from the Respondent, as follows:
   
a. “...a monthly salary of /5000/ Three thousand U.S. dollars for the first season”;
   b. “…/5500/ Three thousand five hundred U.S. dollars at the beginning of the second season”;
   c. “…/7000/ U.S. dollars at the beginning of the third season”.

3. Moreover, clause 5A of the contract provided that the Claimant should “...exert his outmost efforts and capabilities in all training matches in which he is asked to participate at the time and place specified by the club and he is not allowed to be absent from the activities or training of the club for more than (three training sessions) without the consent of [the Respondent] or the specialized staff (the Supervisor of the game & the team’s medical staff) under penalty of cancelling the contract and demanding from [the Claimant] a penalty of 5000 U.S. dollars only”.

4. Likewise, clause 5G of the contract stipulated that “[the Claimant] is not allowed to offend the administrative, technical, and medical staff or any player of [the Respondent] or other teams within the framework of the matches or practice play under the threat of the penalty of a 30% deduction of his monthly salary and [the Respondent] is entitled to rescind the contract and demand compensation as indicated in Article 15 in case of repeated offence”.

5. In addition, clause 9 stated that “In case of the contract termination or its rescinding by [the Respondent] for any reason whatsoever and for no probable cause or arbitrarily, [the Respondent] is committed to pay all salaries due to [the Claimant] up to the date of the contract termination regardless of their total amount and [the Respondent] is entitled to list [the Claimant] on the list of transfers...”.

6. On 17 January 2011, the Claimant lodged a claim against the Respondent in front of FIFA requesting the payment of USD 210,000 and sporting sanctions to be imposed on the latter.

7. In particular, the Claimant explained that on 26 August 2010, before a friendly match, the Respondent’s coach told him that he would not participate in that match since his ITC had not arrived.
8. The Claimant further argued that on 27 August 2010, he was told by the “Administrative of the first football team”, and a member of the Respondent’s Board of Directors, that the latter had terminated his contract since it could not register him to participate in the Football Association of country A Cup due to the fact that his ITC had arrived after the Football Association of country A registration period ended. In this respect, the Claimant alleges that after this incident, he continued to attend trainings and that, on 1 September 2010, the Respondent requested him to leave its premises.

9. In continuation, the Claimant asserts that on 2 September 2010, he submitted a complaint against the Respondent in front of the “General Sports Federation of country S”, to which he received no answer.

10. The Claimant further argues that on 7 September 2010 and 19 September 2010, he remitted the same complaint to the “Professional Committee of the Football Association of country S”, requesting for the latter to act as a mediator between the parties, however also to no avail.

11. Furthermore, the Claimant stresses that on 26 September 2010 and 3 October 2010, two meetings took place with the Respondent and the Football Association of country S, but that no amicable settlement was reached. According to the Claimant, on 4 October 2010, the Respondent provided him with a letter dated 28 September 2010, in which the latter informed him that it was terminating the employment contract based on clause 5G of the contract and that it would pay him his salaries due until that moment in accordance with clause 9 of the contract.

12. On 5 October 2010, the Claimant remitted once again his complaint to the “Professional Committee of the Football Association of country S” and informed the latter that he will leave country S. In this respect, the Claimant alleges that he left country S on 6 October 2010.

13. In conclusion, the Claimant argues that the Respondent had no just cause to terminate the employment contract and thus, it must pay him compensation for breach of contract.

14. In its reply to the claim, the Respondent held that “due to misbehavior of [the Claimant], and according to Article (5) Para. (A) of the contract, the player’s contract was revoked on 28 September 2010, when we received a report from the technical and administrative staff about the misbehavior of the player and for assaulting the technical staff of the team because of his replacement on one of the friendly matches...”. The Respondent argues that it sent this report to the Football Association of country S.
15. In this respect, the Respondent enclosed the termination letter dated 28 September 2010, which “was notified officially to the player on 4/10/2010” and which reads “Due to the poor behavior of the player X, from country A, and according to the article /5/ paragraph /g/ from the player’s contract with the club, the management of Club Y, from country S tell the player mentioned annul of contract”.

16. Furthermore, the Respondent enclosed a document titled “Administrative Decision” dated 28 August 2010 issued by the Respondent itself, where it is stated that the its Board of Directors decided to “terminate the contract with [the Claimant] due to his misbehavior and because of assaulting more than once the technical and administrative staff (…) in addition to his absence from the exercises, according to this report submitted by the Managing Director of the team”.

17. In addition, the Respondent argues that in accordance with clause 5A of the contract, it had the right to terminate the contract “on condition that all his due payments shall be paid…”. In this regard, the Respondent claims that it “invited the player to cash him all his due payments”, invitation which, according to the latter, was refused by the Claimant.

18. Finally, the Respondent asked to be compensated by the Claimant with the amount of USD 5,000 in accordance with clause 5A and 5G of the contract.

19. In his replica, the Claimant rejected all the allegations of the Respondent, specifically his supposed misbehavior and the alleged assault to its staff.

20. The Claimant argues that the document titled “Administrative Decision” dated 28 August 2010 was never notified to him and that it only came to his knowledge with the reply to the claim.

21. In reference to the termination letter dated 28 September 2010, the Claimant argues that it merely refers to his “poor behavior”, an assertion which is of a general nature, vague and therefore it cannot be considered as a just cause to terminate the contract. What is more, he argues that the Respondent did not submit any proof of such alleged misbehavior.

22. On 4 July 2011, FIFA requested the Football Association of S to inform it the exact date on which the Claimant had lodged his complaint in front of the “Football Association Committee of country S” and the status of the claim. The above-mentioned correspondence was answered only by the Respondent as follows “the claim paper on Tuesday 07/09/2010” and that the current status was “the club Manager deal with Mr F (Football Federation of country S) to pay an amount (10000 $) to [the Claimant]”.
In a further letter, the Respondent indicated that “We would like to remember you that the Football Federation of country S to pay an amount (10000$) to [the Claimant]”.

Having been asked by FIFA, the Claimant indicated that he had not signed a new employment contract with any other club. However, according to the information contained in the Transfer Matching System (TMS), the Claimant signed a new employment contract with the Club M, from country U valid as from 1 April 2012 until 31 July 2012, according to which, he was entitled to receive “A gross monthly salary equivalent to the professional football players’ minimum wage of the category (divisional) in which the Club is at the moment in which [the salary] is due…”.

Despite having been asked to do so, the Respondent did not submit its final 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 17 January 2011. 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 deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player and a club.

3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, the Chamber confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2010 and 2012), and considering that the claim was lodged in front of FIFA on 17 January 2011, the 2010 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. First of all, the members of the Chamber acknowledged that, on 15 August 2010, the Claimant and the Respondent concluded an employment contract valid as from 15 August 2010 until 14 August 2013. As to the financial terms of the contract, the Chamber took note that it had been agreed upon between the parties that the Respondent would remunerate the Claimant as follows:

   a. “…a monthly salary of /5000/ Three thousand U.S. dollars for the first season”;
   b. “…/5500/ Three thousand five hundred U.S. dollars at the beginning of the second season”;
   c. “…/7000/ U.S. dollars at the beginning of the third season”.

6. Moreover, the Chamber noticed that it was undisputed by the parties that, by means of a letter dated 28 September 2010, the aforementioned employment contract was unilaterally terminated by the Respondent on 4 October 2010.

7. The members of the Chamber then reviewed the claim of the Claimant, who maintains that the statements regarding his alleged misbehavior and assault to the Respondent’s staff invoked by the latter are false and that the real reason of the termination of the contract by the Respondent was due to the fact that his ITC did not arrive before the Football Federation of country A’s Cup registration period ended. In any case, the Claimant argues that none of the above-mentioned reasons constitute a just cause to terminate the employment contract. Consequently, the Claimant asks to be awarded with compensation for breach of contract from the Respondent.

8. In continuation, the Chamber turned its attention to the arguments presented by the Respondent and acknowledged that, according to the latter, the Claimant breached the employment contract, in particular its clause 5G, by “assaulting the technical staff of the team because of his replacement on one of the friendly matches...” and that the above-mentioned incident was documented by a decision of its Board of Directors dated 28 August 2010.

9. Furthermore, the DRC noted that the Respondent asked to be compensated with USD 5,000, based on clause 5A of the contract.

10. In view of the above-mentioned dissenting views of the parties, the DRC turned its attention to the fundamental question as to whether the Respondent had just cause to unilaterally terminate the contract on 4 October 2010.

11. In this context, the members of the Chamber reverted firstly to the Respondent’s arguments contained in the termination letter dated 28 September 2010, which are reiterated in the Respondent’s reply to the claim, and noted that in said
letter, the Respondent held that the Claimant’s behavior was in contravention with his contractual duties while referring to article 5G of the employment contract.

12. Having said this, the DRC wished to recall the general legal principle set forth in art. 12 par. 3 of the Procedural Rules and which reads that any party claiming a right on the basis of an alleged fact shall carry the burden of proof.

13. In this regard, and after a thorough analysis of the documentation available on file, the members of the Chamber found that the Respondent had not submitted any documentary evidence demonstrating the Claimant’s alleged misconduct referred to by the former. What is more, the Chamber highlighted that the Respondent, prior to having terminated the employment contract, had not warned the Claimant of any misconduct.

14. In view of the above, the DRC inevitably came to the conclusion that the argument of the Respondent that the termination of the contract was justified by the Claimant’s misconduct and disrespect of his contractual obligations was to be rejected.

15. In this context, the DRC was eager to emphasise that only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. 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 always only be an ultima ratio.

16. In respect of the decision of the Respondent’s Board of Directors dated 28 August 2010, the members of the Chamber wished to highlight that said decision is rendered by the Respondent itself and is not supported by any additional documentation whatsoever. Consequently, the Chamber deemed that the above-mentioned decision of the Respondent’s Board of Directors is unfit to actually prove the alleged misbehavior of the Claimant. What is more, the members of the Chamber noted that said decision was not signed by the Claimant and the latter claims not having been aware of it until the reply to the claim.

17. On account of the above, the Chamber unanimously decided, while rejecting the Respondent’s counterclaim, that the Respondent had no just cause to unilaterally terminate the employment relationship between the parties and, therefore, concluded that the Respondent had terminated the employment contract without just cause on 4 October 2010 and that, consequently, the
Respondent is to be held liable for the early termination of the employment contract without just cause.

18. 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.

19. At this point and for the sake of completeness, the members of the Chamber wished to emphasise that despite there is a discrepancy in the contract regarding the Claimant’s salary i.e. the amount established in numbers and the one in letters, the Respondent did not contest the amounts requested by the Claimant and thus, the Chamber decided that the amount established in numbers is the one to be taken into consideration.

20. First of all, the members of the Chamber concurred that the Respondent must fulfill its obligations as per employment 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.* USD 5,000 as per his salary of September 2010.

21. 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.

22. 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.

23. 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.

24. Having recalled the aforementioned, 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 contract, this would run for another thirty five months. Consequently, the Chamber concluded that the remaining value of the contract as from its early termination by the Claimant until its regular expiry amounts to USD 205,000, an amount which shall serve as the basis for the final determination of the amount of compensation for breach of contract.

25. In continuation, the Chamber remarked that, conversely to the statement of the Claimant, according to the TMS, the Claimant had concluded a new employment contract with Club M, from country U valid as from 1 April 2012 until July 2012 according to which, he was entitled to receive “A gross monthly salary equivalent to the professional football players’ minimum wage of the category (divisional) in which the Club is at the moment in which [the salary] is due”. Consequently, in accordance with the constant practice of the Dispute Resolution Chamber and the general obligation of the Claimant to mitigate his damages, the remuneration under the new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract.

26. In this regard and in view of the fact that the Claimant failed to provide the Chamber with the above-mentioned contract, the Claimant decided that the period for which the Claimant is entitled to receive compensation should only run until the date on which the Claimant signed the new employment contract i.e. 1 April 2012.

27. In view of all of the above, the Chamber decided that the Respondent must pay the amount of USD 99,000 to the Claimant as compensation for breach of contract, which is considered by the Chamber to be a reasonable and justified amount.

28. 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 X, is partially accepted.

2. The Respondent, Club Y, has to pay to the Claimant, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of USD 5,000.

3. The Respondent has to pay to the Claimant, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 99,000.
4. In the event that the amounts due to the Claimant in accordance with the above-mentioned numbers 2. and 3. are not paid by the Respondent within the stated time limits, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limits and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. 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.

6. Any further claim lodged by the Claimant, 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
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