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 I, from country M

as Claimant

against the club,

Club A, from country K

as Respondent

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


2. The contract specifies, inter alia, that the Respondent is to provide the Claimant with a monthly salary amounting to USD 31,111 equivalent to currency of country K 4,666,666.

3. On the same day, both parties signed an appendix (hereinafter: the appendix) in relation to the contract.

4. The appendix provides for a monthly salary amounting to USD 28,000 net equivalent to currency of country K 4,169,200 net.

5. The appendix also states that “the accommodation costs in country K city are to be paid in the amount of currency of country K 75,000 per month for the validity of validity of agreement”.

6. The Claimant put the Respondent in default by email on 15 October 2013, as well as by post on 22 October 2013, requesting the payment of outstanding amounts within 7 days.

7. On 31 October 2013, the Claimant terminated the contract in writing.

8. On 8 November 2013, the Claimant lodged a complaint before FIFA against the Respondent for breach of contract, requesting:
   - the payment of currency of country K 15,152,340 net as outstanding payments based on the appendix, plus 5% interest p.a. as of the due date of each payment, broken down as follows:
     - Currency of country K 2,419,740 as balance of salary for December 2012;
     - Currency of country K 12,507,600 as salary for July 2013 to September 2013;
     - Currency of country K 225,000 as accommodation expenses from July 2013 until September 2013;
   - the payment of currency of country K 38,197,800 net as compensation corresponding to the residual value of the appendix, plus 5% interest p.a. as of the date of claim;
   - sporting sanctions to be imposed on the Respondent.

9. The Claimant alleges that the Respondent failed to meet its primary obligation of payment. The Claimant holds that by the time he put an end the contract, the Respondent had neither paid his salary for more than 3 months, i.e. part of his salary for December 2012, plus his salary for July 2013 to September 2013, nor covered the
expenses related to his accommodation in country K from July 2013 until September 2013.

10. According to the Claimant, the Respondent had only paid the total amount of currency of country K 48,510,660 net. Yet, the Claimant was apparently entitled to the total amount of currency of country K 63,663,000 net for the aforementioned period and based on the appendix, corresponding to currency of country K 62,538,000 net as salary, plus currency of country K 1,125,000 for accommodation expenses. Therefore, the Claimant deems that the amount of currency of country K 15,152,340 was outstanding and thus, he had a just cause to put an end to the contract.

11. In spite of having been invited to do so, the Respondent did not submit its comments pertaining to the matter at stake.

12. Upon FIFA’s request, the Claimant confirmed having signed an employment contract on 7 February 2014 with Club V, from country M, “valid for a period of 6 months until 15 June 2014”.

13. The contract with Club V provided by the Claimant stipulates that the latter is to receive a total fixed remuneration of currency of country M 614,200, i.e. currency of country M 541,200 from February to May plus currency of country M 73,000 for half of June 2014.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter: the Chamber or the DRC) analysed whether it was competent to deal with the matter at hand. In this respect, the members of the Chamber took note that the present matter was submitted to FIFA on 8 November 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) are applicable to the matter at hand (cf. art. 21 par. 1 and par. 2 of the Procedural Rules).

2. Subsequently, the DRC referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2014) it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from country M and a country K club.

3. Furthermore, the DRC 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 par. 2 of the Regulations on the Status and Transfer of Players (edition 2014), and considering that the present claim was lodged on 8 November 2013, the
2012 edition of said regulations (hereinafter: the Regulations) is applicable to the matter at hand as to the substance.

4. The competence of the DRC and the applicable regulations having been established, the Chamber entered into the substance of the matter. In this respect, the DRC started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the DRC 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 respect, the Chamber acknowledged that the parties to the dispute had signed a contract valid as of 1 July 2012 until 30 June 2014 in accordance with which the Respondent would pay the Claimant a monthly salary of USD 31,111 equivalent to currency of country K 4,666,666. The DRC also duly noted that the appendix related to the contract provides for a monthly salary of USD 28,000 net equivalent to currency of country K 4,169,200 net.

6. The DRC further observed that the Claimant lodged a complaint in front of FIFA against the Respondent, explaining that after having put the Respondent in default by email on 15 October 2013 and by post on 22 October 2013, he terminated the contract in writing on 31 October 2013, inter alia, as a result of his remuneration having remained unpaid by the Respondent partially in December 2012 and in its entirety since July 2013.

7. Subsequently, the Chamber noted that the Respondent failed to present its response to the claim of the Claimant, in spite of having been invited to do so. By not presenting its position to the claim, the DRC was of the opinion that the Respondent renounced its right of defence and, thus, accepted the allegations of the Claimant.

8. As a consequence of the aforementioned consideration, the DRC concurred that in accordance with art. 9 par. 3 of the Procedural Rules, he shall take a decision upon the basis of the documentation already on file; in other words, upon the statements and documents presented by the Claimant.

9. The DRC highlighted that the underlying issue in this dispute was to determine whether the contract had been terminated by the Claimant on 31 October 2013 with or without just cause. The Chamber also underlined that, subsequently, it would be necessary to determine the financial consequences for the party that is to be held liable for the early termination of the pertinent employment contract.

10. In line with the above, the DRC took into consideration that according to the Claimant, the Respondent failed to pay his remuneration in the total amount of currency of country K 15,152,340, amount composed of part of the salary of December 2012 (currency of country K 2,419,740), the salaries from July to September 2013 (currency of country K 4,169,200 x 3), as well as currency of country K 225,000
corresponding to accommodation expenses from July 2013 until September 2013 (currency of country K 75,000 x 3).

11. In this regard, the DRC duly noted that the amounts claimed by the Claimant are solely based on the appendix. In view thereof and the fact that the Respondent failed to present its response, the DRC deemed that it would henceforth only need to consider the amounts set out in the appendix when evaluating what remuneration was due to the Claimant.

12. The DRC took note that the Claimant was entitled to, inter alia, a net monthly salary amounting to currency of country K 4,169,200, as well as the payment of accommodation costs by the Respondent in the amount of currency of country K 75,000 per month.

13. Moreover, the DRC acknowledged that the Claimant had terminated the contract in writing, on 31 October 2013, after having put the Respondent in default twice.

14. Considering the financial conditions of the contracts as well as the arguments brought forward by the Claimant, the Chamber took note that on the date of termination, i.e. 31 October 2013, more than three monthly salaries were outstanding.

15. Having taken into consideration all of the above, the DRC decided that it could be established that the Respondent had seriously neglected its contractual obligations towards the Claimant in a continuous and constant manner, i.e. the Respondent had failed to remunerate the Claimant for a substantial period of time. Therefore, the DRC considered that the Respondent was found to be in breach of the contract and appendix and that the breach was of such seriousness that, in line with the Chamber's long-standing and well-established jurisprudence, the Claimant had a just cause to unilaterally terminate the contractual relationship with the Respondent on 31 October 2013, having previously put the Respondent in default of payment of the outstanding amounts.

16. On account of the above, the DRC established that the Claimant had terminated the contract with just cause on 31 October 2013 and that, consequently, the Respondent is to be held liable for the early termination of the employment contact with just cause by the Claimant.

17. Having established the above, the Chamber focussed its attention on the consequences of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the DRC decided that the Claimant is entitled to receive an amount of money from the Respondent as compensation for the termination of the contract with just cause in addition to any outstanding payments on the basis of the relevant employment contract.
18. First of all, the DRC concurred that the Respondent must fulfil its obligations as per the contract and appendix in accordance with the general legal principle of *pacta sunt servanda*. Consequently, the DRC decided that the Respondent is liable to pay to the Claimant the remuneration that was outstanding at the time of the termination. In this respect, and considering that without provision to the contrary the monthly salaries are presumed to fall due on the last day of the month, the Chamber considered that the amount of currency of Country K 19,396,540 was outstanding, consisting of the outstanding salaries corresponding to December 2012 (partially) and from July to October 2013 as well as unpaid accommodation expenses from July 2013 to October 2013 amounting to currency of Country K 300,000.

19. As a consequence, the DRC decided that the Respondent is liable to pay the total amount of currency of Country K 19,396,540 to the Claimant corresponding to the outstanding remuneration at the time of the termination of the contract by the Claimant.

20. In addition, taking into consideration the Claimant's claim for interest and in accordance with its well-established jurisprudence, the DRC decided to award the Claimant interest at the rate of 5% p.a. as of the due date of each payment.

21. In continuation, the members of 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 DRC 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.

22. In application of the relevant provision, the DRC held that it first of all had to clarify whether the pertinent 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 DRC established that no such compensation clause was included in the contract at the basis of the matter at stake.

23. As a consequence, the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The DRC 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.
24. The members of the Chamber then turned their attention to the remuneration and other benefits due to the Claimant under the existing contracts and/or the new contract, which criterion was considered by the DRC to be essential. The DRC 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 in the calculation of the amount of compensation.

25. Bearing in mind the foregoing, the DRC proceeded with the calculation of the monies payable to the Claimant under the terms of the appendix, as from November 2013 until 30 June 2014, and concluded that the residual value of the said appendix amounts to currency of country K 33,953,600. Consequently, the DRC concluded that the amount of currency of country K 33,953,600 serves as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.

26. In continuation, the Chamber verified as to whether the Claimant 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 Claimant’s general obligation to mitigate his damages.

27. The Chamber recalled that, on 7 February 2014, the Claimant signed an employment contract with the club from country M, Club V, valid until 15 June 2014, in accordance with which the Claimant was to receive a total fixed remuneration of currency of country M 614,200 during the said period of time.

28. Consequently, on account of all of the above-mentioned, the DRC decided to partially accept the Claimant’s claim and determined that the Respondent must pay the amount of currency of country K 31,903,080 as compensation for breach of contract in the case at hand.

29. In addition, taking into account the Claimant’s request as well as the constant practice of the Dispute Resolution Chamber in this regard, the DRC decided that the Respondent must pay the Claimant interest of 5% p.a. on the amount of compensation as of the date of claim, i.e. 8 November 2013, until the date of effective payment.

30. Finally, the DRC concluded his 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 is partially accepted.
2. The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of currency of country K 19,396,540 plus 5% interest until the date of effective payment as follows:

   a. 5% p.a. as of 1 January 2013 on the amount of currency of country K 2,419,740;
   b. 5% p.a. as of 1 August 2013 on the amount of currency of country K 4,244,200;
   c. 5% p.a. as of 1 September 2013 on the amount of currency of country K 4,244,200;
   d. 5% p.a. as of 1 October 2013 on the amount of currency of country K 4,244,200;
   e. 5% p.a. as of 1 November 2013 on the amount of currency of country K 4,244,200.

3. The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, compensation in the amount of currency of country K 31,903,080 plus 5% interest p.a. on said amount as from 8 November 2013 until the date of effective payment.

4. In the event that the aforementioned amounts plus interest are not paid within the stated time limit, 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 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

Player I, from country M / Club A, from country K
For the Dispute Resolution Chamber:

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Jérôme Valcke
Secretary General

Encl. CAS directives