Decision of the

Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 27 August 2014,

by Philippe Diallo (France), DRC judge,

on the claim presented by the player,

Player B, from country G

as Claimant

against the club,

Club F, from country C

as Respondent

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

1. On 12 July 2009, Player B, from country G (hereinafter: *player* or *Claimant*), and Club F, from country C (hereinafter: *club* or *Respondent*), concluded an employment contract (hereinafter: *contract*) valid as from the date of signature until "31 May 2009 or after the last game of the Championship (2009-2010) whichever is the latest".

2. Clause 30 of the contract provides for a total remuneration of EUR 80,000, to be paid in ten equal instalments of EUR 8,000 each. The first instalment was to be paid on 30 August 2009 and “the next on the last day of each consecutive month until full payment with 90 days grace period on each instalment”.

3. Clause 17 of the contract stipulates that “If the player shall be guilty of serious misconduct or the disciplinary Rules of the Club or the terms and conditions of this Agreement, the Club may, on giving notice to the player by recorded delivery letter, stating the full reasons for the action taken, terminate this Agreement. Such action shall be subject to the player’s right of appeal as follows:

   17.1 to the Dispute Resolution Chamber established to the country C Football Association;
   17.2 to any tribunal or labour Court in country C;
   17.3 to FIFA and its competent departments”.

4. On 12 July 2009, the parties also concluded an agreement concerning the image rights of the player (hereinafter: *agreement*) for the season 2009/2010. In return for the assignment of his image rights to the club during the season 2009/2010, the player was entitled to receive the amount of EUR 190,000 as follows:
   a) EUR 50,000 as a cheque payable on 31 August 2009;
   b) EUR 140,000 in ten equal instalments “starting as from the 30th August 2009 until the 31st May 2010 with 90 days grace period in each payment”.

5. Furthermore, according to the agreement, the club would pay the player’s accommodation in an amount limited to EUR 1,000 per month, a yearly flight ticket allowance in the amount of EUR 5,000 and a yearly car allowance in the amount of EUR 2,000.

6. On 17 June 2010, the player sent a letter to the club requesting the outstanding amount of EUR 46,000. On 27 September 2010, the player sent another letter of default to the club. In its answer dated 12 October 2010, the club contested the outstanding amount due to a penalty which the club had apparently imposed on the player and which, according to the club, had remained uncontested by the player. Upon the player’s request, two letters dated 6 December 2010 and 7 March 2011 were addressed by the country G Football Federation to the country C
Football Association in an attempt to find a solution. In particular, the country G Football Federation mentions that according to the player the imposed fine is not justified as he always complied with all rules.

7. On 27 July 2011, the player lodged a claim before FIFA claiming outstanding remuneration in the total amount of EUR 46,000, in accordance with the following breakdown:

   a) EUR 28,000 corresponding to the instalments of April and May 2010 based on the agreement;
   b) EUR 2,000 corresponding to the accommodation allowance for April and May 2010;
   c) EUR 16,000 corresponding to the two monthly salaries of April and May 2010 based on the contract.

Furthermore, the player requested a list of payment receipts in connection with the contract between 31 August 2009 and 31 May 2010. The player explains that he needs such list in order to comply with his tax obligations. Finally, he requests the club to pay the procedural costs.

8. In its reply to the player’s claim, the club first of all contested FIFA’s competence to adjudicate the present matter, referring to clause 17 of the contract and asserting that the national DRC of the country C Football Association is the competent deciding body.

9. In this respect and upon request of FIFA, the Respondent provided FIFA with the “Regulations for the registration and transfer of football players country C Football Association (2005)” (hereinafter: Country C Regulations; came into force on 15 June 2005). According to the country C Regulations, the Dispute Resolution Committee (hereinafter: NDRC) is composed of five members, namely the Chairman, the Vice-Chairman and one member, all appointed by the Executive Committee of the country C Football Association and two members appointed by the country C Football Players’ Association (art. 22.1.1 and art. 22.1.3).

10. The decisions are taken by simple majority (art. 22.8.1), subsequent to a summary and written procedure (art. 22.13.1 and art. 22.13.3). Clubs affiliated to the country C Football Association, football players and other interested persons are entitled to lodge a claim before the NDRC (art. 22.13.5). Any decision of the NDRC may be appealed to the Disciplinary Authority of the country C Football Association, which shall reach a final decision (art. 22.10).

11. As to the substance of the case, the club explained that according to clause 12 of the contract, the player had agreed to abide by the internal regulations of the club. Due to an alleged breach of these regulations (“indisciplinary behaviour of
the player”) the club apparently imposed a fine on the player which was equal to two monthly salaries, i.e. EUR 46,000. In this regard, the club alleged that it had informed the player about said fine in writing and that the player "accepted such sanction imposed".

II. Considerations of the DRC judge

1. First of all, the Dispute Resolution Chamber (DRC) judge analysed whether he was competent to deal with the case at hand. In this respect, the DRC judge took note that the present matter was submitted to FIFA on 27 July 2011. Consequently, the DRC judge concluded that 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 par. 2 and 3 of the Procedural Rules).

2. With regard to the competence of the DRC judge, art. 3 of the Procedural Rules states that the DRC judge shall examine his jurisdiction in the light of art. 22 to 24 of the Regulations on the Status and Transfer of Players (edition 2014). In accordance with art. 24 par. 1 and par. 2 lit. i. in combination with art. 22 lit. b) of the aforementioned Regulations, the DRC judge would, in principle, be competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a country G player and a country C club.

3. In particular, and in accordance with art. 24 par. 2 lit. i) of the Regulations on the Status and Transfer of Players, the DRC judge confirmed that he may adjudicate in the present dispute which value does not exceed currency of country C 100,000.

4. However, the DRC judge acknowledged that the Respondent contested the competence of FIFA’s deciding bodies on the basis of clause 17 of the employment contract, highlighting that the parties to the contract had agreed to submit any dispute to the national Dispute Resolution Chamber of the country C Football Association.

5. Taking into account the above, the DRC judge emphasised that in accordance with art. 22 lit. b) of the 2014 edition of the Regulations on the Status and Transfer of Players he is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the Association and/or a collective bargaining agreement. With regard to the standards to be imposed on
6. In relation to the above, the DRC judge also deemed it vital to outline that one of the basic conditions that needs to be met in order to establish that another organ than the DRC can settle an employment-related dispute between a club and a player of an international dimension, is that the jurisdiction of the relevant arbitration tribunal derives from a clear reference in the employment contract.

7. Therefore, while analysing whether it was competent to hear the present matter, the DRC judge considered that he should, first and foremost, analyse whether the employment contract at the basis of the present dispute actually contained a jurisdiction clause.

8. Having said this, the DRC judge turned his attention to article 17 of the contract, which stipulates that, “if the player shall be guilty of serious misconduct or the disciplinary Rules of the Club or the terms and conditions of this Agreement, the Club may, on giving notice to the player by recorded delivery letter, stating the full reasons for the action taken, terminate this Agreement. Such action shall be subject to the player’s right of appeal as follows: 17.1 the Dispute Resolution Chamber established to the country C Football Association; 17.2 to any tribunal or labour Court in country C; 17.3 to FIFA and its competent departments”.

9. In view of the above, the DRC judge was of the opinion that the employment contract did not make reference to one specific national dispute resolution chamber in the sense of art. 22 lit. b) of the aforementioned Regulations, but, to the contrary, to several courts and arbitration bodies, including FIFA. Therefore, the DRC judge deemed that said clause can by no means be considered as an exclusive arbitration clause in favour of the country C Football Association national deciding body, as asserted by the Respondent.

10. Having established that the first criteria for the recognition of the competence of a national decision-making body is not fulfilled in the present matter and considering that FIFA was explicitly mentioned in art. 17 of the contract, the DRC judge deemed unnecessary to examine any further points which would need to be assessed before concluding that a national deciding body is competent, instead of FIFA.

11. In view of all the above, the DRC judge established that, in line with the constant jurisprudence of the DRC, the Respondent’s objection to the competence of FIFA
to deal with the present matter has to be rejected and that the DRC judge is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.

12. Subsequently, the DRC judge analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2010, 2012 and 2014) and considering that the present claim was lodged in front of FIFA on 27 July 2011, the 2010 edition of the Regulations on the Status and Transfer of Players (hereinafter: the Regulations) is applicable to the matter at hand as to the substance.

13. In continuation, with regard to the claimed payments in connection to the image rights agreement apparently signed by the parties, the DRC judge also had to verify whether, for formal reasons, he was competent to deal with this specific component or not. In fact it remains that this part of the claim could possibly not be considered due to the DRC judge lacking competence to deal with disputes related to image rights.

14. While analysing whether he was competent to hear this part of the claim, the DRC judge, without entering into any discussion regarding the actual wording of art. 1 of the agreement, which defines the agreement as an image rights agreement, wished to highlight that said agreement contained elements which led to believe that it was not in fact an image rights agreement but rather a separate agreement to the employment contract, i.e. directly linked to the services of the Claimant as a player.

15. As a general rule, if there are separate agreements, the DRC judge tends to consider the agreement on image rights as such and does not have the competence to deal with it. However, such conclusion might be different if specific elements of the separate agreement suggest that it was in fact meant to be part of the actual employment relationship. In the case at hand, such elements appear to exist. In particular, the agreement contains inter alia stipulations regarding entitlement to accommodation expenses, car allowance and flight tickets, which are typical for employment contracts and not for image rights agreements. Consequently, the DRC judge decided not to consider the image rights agreement as such, but determined that said agreement was in fact an additional agreement to the employment contract instead.

16. In view of all the above, the DRC judge established that the image rights agreement is to be considered, meaning that he is in a position to take into consideration the relevant agreement when assessing the Claimant’s claim.
17. The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. In this respect, the DRC judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the DRC judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

18. In continuation, the DRC judge acknowledged that the Claimant and the Respondent had concluded an employment contract valid as from the date of signature until “31 May 2009 or after the last game of the Championship (2009-2010) whichever is the latest” as well as an agreement for the season 2009/2010. As to the financial terms of the contract, the DRC judge took note that it had been agreed upon between the parties that the Respondent would remunerate the Claimant with a salary of EUR 80,000, payable in ten equal instalments of EUR 8,000 each. In addition, the DRC judge took due note that according to the agreement, the Claimant was entitled to receive from the Respondent, inter alia, the amount of EUR 140,000, to be paid in ten equal instalments of EUR 14,000 each, as well as the amount of EUR 1,000 per month for accommodation.

19. The DRC judge further observed that the Claimant lodged a claim in front of FIFA against the Respondent seeking payment in the amount of EUR 44,000, corresponding to the unpaid monthly salaries of April and May 2010 as per the employment contract and the agreement. Moreover, the DRC judge took note that the Claimant requested the amount of EUR 2,000 for unpaid accommodation allowance of April and May 2010. Consequently, the Claimant requested to be awarded with the payment of the total amount of EUR 46,000.

20. Subsequently, the DRC judge noted that the Respondent, in its statement of defence, stated that it had apparently imposed a fine in the amount of EUR 46,000 on the Claimant due to “indisciplinary behavior” of the latter.

21. In this respect, the DRC judge noted that the above-mentioned fine was apparently imposed in accordance with the Respondent’s internal rules, however, the Respondent failed to submit a copy of those internal rules. Consequently, the DRC judge referred to art. 12 par. 3 of the Procedural Rules which stipulates that any party claiming a right on the basis of an alleged fact shall carry the burden of proof and determined that he could not establish whether the fine was imposed in line with the internal rules. In this regard, the DRC judge emphasized that a fine in the total amount of EUR 46,000 without any substantiation cannot be upheld. Hence, the DRC judge decided that the fine apparently imposed by the Respondent on the Claimant must be disregarded.
22. Furthermore, and irrespective of the foregoing consideration, the DRC judge wished to point out that the imposition of a fine, or any other available financial sanction in general, shall not be used by clubs as a means to set off outstanding financial obligations towards players.

23. On account of all the above, the DRC judge established that the Respondent failed to remit the Claimant's monthly remuneration plus accommodation expenses in the total amount of EUR 46,000, corresponding to April and May 2010.

24. Consequently, the DRC judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent must fulfil its contractual obligations towards the Claimant and is to be held liable to pay the Claimant outstanding remuneration in the total amount of EUR 46,000.

25. The DRC judge further decided that the Claimant's claim for procedural costs is rejected in accordance with art. 18 par. 4 of the Procedural Rules and the respective longstanding jurisprudence of the Dispute Resolution Chamber.

26. The DRC judge concluded his deliberations in the present matter by rejecting any further claim of the Claimant.

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III. Decision of the DRC judge

1. The claim of the Claimant, Player B, is admissible.

2. The claim of the Claimant is accepted.

3. The Respondent, Club F, has to pay to the Claimant the amount of EUR 46,000, **within 30 days** as from the date of notification of this decision.

4. In the event that the aforementioned amount is not paid by the Respondent within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to FIFA’s 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 remittance is to be made and to notify the DRC judge of every payment received.

**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:

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For the DRC judge:

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Jérôme Valcke  
Secretary General

Encl. CAS Directives