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 R, from country B

as Claimant

against the club,

Club A, from country R

as Respondent

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

1. The Player R, from country B (hereinafter: the Claimant) and Club A, from country R (hereinafter: the Respondent), concluded “a sporting services agreement” (hereinafter: the agreement) for a period of four months, as of 1 February 2012 until 30 June 2012.

2. The agreement specifies, inter alia, that the Claimant is entitled to a fixed remuneration of EUR 32,000 net, payable in four equal monthly instalments.

3. The agreement also establishes that “the amendment of any provisions of the present agreement can be made by an addendum signed by both parties”.

4. Pursuant to article VII of the agreement, “the parties undertake not to refer to any law court for the settlement of the litigations until after finishing all the methods of the court of jurisdiction of country R Football Federation, country R Professional League and/or AJF. The litigation arising from the execution of the present agreement shall be settled following the procedural order:
   a) Amiable way;
   b) By bringing the litigation before the court of jurisdiction of country R Football Federation, country R Professional League, AJF, FIFA and TAS, as the case may be”.

5. Article VIII of the agreement stipulates that “this agreement shall be filled in according to the stipulations of the regulations of country R Football Federation, country R Professional League and AJF, as the case may be”.

6. On 10 September 2012, the Claimant lodged a complaint before FIFA against the Respondent, requesting the payment of the following amounts:
   - EUR 24,000 as outstanding salaries from March to May 2012;
   - EUR 403.28 as “default interests at the rate of 5% p.a., calculated over those outstanding remuneration from the respective due date until 31 August 2012”;
   - EUR 3.287 “per each day of delay also as default interests at the rate of 5% p.a., from 1st September until effective and integral payment of the referred EUR 24,000”.

7. The Claimant alleges that the club only paid him the amount of EUR 8,000 corresponding to his salary for February 2012. Yet, the Claimant was apparently entitled to the total amount of EUR 32,000 for the duration of the agreement. Therefore, the Claimant deems that the amount of EUR 24,000 is outstanding.

8. In its statement of defence, the Respondent first of all contests the jurisdiction of the FIFA Dispute Resolution Chamber (hereinafter: the DRC) on the basis of the jurisdiction clause contained in the agreement (cf. point 4 above). The Respondent holds that the Claimant should have lodged his claim before the “jurisdictional committees” of the country R Professional Football League since the relevant deciding bodies meet the requirements of article 22. lit. b) of the FIFA Regulations on the Status and Transfer of Football Players (hereinafter: the FIFA Regulations).

9. The Respondent also claims that the “Regulations on the Status and Transfer of Football Players” of the country R Football Federation (hereinafter: the country R Football Federation Regulations) are applicable to the contractual relation between the parties, based on art. VIII of the agreement (cf. point 5 above).
10. In this regard, the Respondent provided FIFA with a partial copy and unspecified edition of the country R Football Federation Regulations which establishes the following:
   a. with regard to the existing deciding bodies:
      Art. 26.1 lit. a) of the country R Football Federation Regulations indicates that the first instance deciding bodies are “the National Chamber of Litigation (CNSL) subcommittee country R Football Federation, country R Professional League or the Players’ Status Committee (SC) AJF, as the case”.
   b. with regard to the jurisdiction of the deciding bodies:
      According to art. 26.2 lit. a) of the country R Football Federation Regulations, “the CNSL is competent to hear cases which have as object the conclusion, interpretation and execution of contracts concluded between clubs and players, aiding and maintaining contractual stability”;
      Pursuant to art. 26.8 of the country R Football Federation Regulations, “the competence of solving cases in which are exclusively engaged the clubs participating in the First League National championship, the officials, the players and their coaches are exclusively settled by the country R Professional Football Federation jurisdictional bodies according to the country R Football Federation - convention, namely Professional Football Federation’s CNSL and the Professional Football League Appeal Court”.
   c. with regard to the composition of the deciding bodies:
      Art. 26.5 of the RFF Regulations provides that the CNSL of the country R Football Federation is composed of a chairman and a deputy chairman elected by “consensus by the club and player’s representatives from a list containing minimum five names, prepared by the RFF Executive Committee”, three players’ representatives nominated by the Association of Amateur and Non-Amateur Footballers (AFAN), and three clubs’ representatives nominated by the Executive Committee of the country R Football Federation.
      Art. 26.8 in fine of the RFF Regulations states that the CNSL of the country R Football Federation is composed of “five members, among which a president, a vice-president, their nominal component, being approved by the country R Professional Football Federation Executive Committee for a one year mandate”.
   d. with regard to the possibility of an appeal:
      Art. 26.1 lit. b) of the country R Football Federation Regulations establishes that the decisions may be appealed before the Appeal Committee “for appeals against pernicious CNSL decisions of country R Football Federation” and before the Appeal Committee of country R Football Federation “against CNSL decisions of the country R Football Federation”.
      Art. 26.1 lit. c) of the country R Football Federation Regulations provides that the decisions of the aforementioned appeal bodies may be appealed to the Court of Arbitration for Sport (CAS) under the conditions provided for in the country R Football Federation Regulations.

11. As to the substance of the dispute, the Respondent holds that the agreement was followed by the signature of an employment contract by both parties (hereinafter: the contract). The Respondent provides a copy of the alleged contract signed on 1 March 2012, valid as of the date of signature until 31 May 2012. Pursuant to the contract, the Claimant is entitled to a total amount of EUR 24,000 net payable in 3 monthly instalments due by the 10th day of the next month.

12. Referring to the aforementioned contract, the Respondent maintains that upon its signature, all the rights and obligations arising from the agreement ceased. In other words, the Respondent asserts that only the amounts stipulated in the contract can be taken into account. The Respondent refers to art. 13 par. 3 of the country R Football Federation Regulations according to which “in case during the period in which a contract
is valid a new agreement is recorded at the competent forum, with the same club, for the same period or for a different period, the previous contract is by law considered invalid, as well as all of the correlative rights and obligations arising from the first contract”.

13. In this context, the Respondent deems that the Claimant is partially entitled to the claimed amounts. In particular, the Respondent alleges that it paid a total amount of EUR 5,880 after signature of the contract. In this respect, the Respondent provided an untranslated document listing amounts totalling EUR 9,880 with dates between 24 February 2012 and 31 May 2012 with reference to the Claimant’s name.

14. The Respondent also refers to a fine amounting to EUR 6,000 deducted from the Claimant’s remuneration, i.e. 25% of EUR 24,000. According to the Respondent, said fine results from the Claimant’s alleged improper behaviour in training and his low efficiency in the official matches which was reported by the club in a statement dated 15 May 2012, a copy of which was provided by the Respondent. In this respect, after having summoned the Claimant, the Board of Directors of the Respondent rendered a decision on 21 May 2012 added to the file, along with the letter of invitation addressed to the player dated 16 May 2012.

15. On account of the above, the Respondent would apparently only owe the Claimant the amount of EUR 12,120 which has not been honoured yet due to financial issues allegedly faced by the Respondent. Notwithstanding, the Respondent states being willing to proceed with the payment as soon as possible.

16. The Respondent finally rejects the claimed amounts pertaining to interest insofar as it considers that it would represent a further compensation which has not been agreed in the contract by the parties.

17. In his replica, the Claimant asserts that FIFA is competent to deal with the matter at stake pursuant to article 22 lit. b) of the FIFA Regulations. The Claimant alleges that the existing deciding bodies in country R do not comply with the requirements pertaining to equal representation and fair proceedings. As to the contract, the Claimant denies having signed such document and relies on the agreement for the claimed amounts. In particular, the Claimant states that he does not remember having signed another document than the one provided with his claim, i.e. the agreement.

18. Regarding the fine of 25% deducted from his remuneration, the Claimant deems that such sanction is unilateral and thus illegal. The Claimant alleges not having been informed of the meeting or of the decision of the Board of Directors. In particular, the Claimant holds that the letter of invitation provided by the Respondent has not been notified to him.

19. Finally, the Claimant contests having received the amount of EUR 5,880 as stated by the Respondent (cf. point 13 above). The Claimant also insists on the lack of evidence corroborating the Respondent’s argumentation. Therefore, the Claimant reiterated his claim for all amounts.

20. In its final comments, the Respondent maintains its position according to which FIFA is not competent since the national existing deciding bodies comply with the requirements provided for in article 22 lit. b) of FIFA Regulations. The Respondent further refers to article 58 par. 1 of the country R Football Federation Statutes according to which “litigations resulting from or in connection to the football activity in country R […] are to be settled exclusively by the commissions with jurisdictional attributions of the country R Football Federation”.

Player R, from country B / Club A, from country R
II. Considerations of the DRC judge

1. First of all, the DRC judge analysed whether he was competent to deal with the matter at stake. In this respect, the DRC judge referred to art. 21 par. 1 of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (hereinafter: the Procedural Rules). The present matter was submitted to FIFA on 10 September 2012. Therefore, the DRC judge concluded that the edition 2008 of the Procedural Rules was applicable to the matter at hand (cf. art. 21 par. 2 and 3 of the Procedural Rules).

2. Subsequently, the DRC judge 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 b) of the Regulations on the Status and Transfer of Players (editions 2010, 2012 and 2014; hereinafter: the Regulations), the DRC judge shall adjudicate on employment-related disputes between a club and a player, with an international dimension.

3. Having said that, the DRC judge stated that he would, in principle, be competent to decide on the present litigation involving a country B player and a country R club regarding an employment-related dispute.

4. However, the DRC judge acknowledged that the Respondent contested the competence of FIFA’s DRC to deal with the present case, referring to art. VII of the agreement.

5. The DRC judge equally noted that the Claimant rejected such position and insisted on the fact that FIFA had jurisdiction to deal with the present matter because the country R Football Federation and the country R Professional Football Federation do not fulfil the requirements set out in art. 22 lit. b) of the Regulations.

6. Taking into account the above, the DRC judge emphasised that, in accordance with art. 22 lit. b) of the 2012 FIFA Regulations, 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 an independent arbitration tribunal guaranteeing fair proceedings, the DRC judge referred to the FIFA Circular no. 1010 dated 20 December 2005. In this regard, the members of the Chamber further referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.

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

8. Having said this, the members of the DRC judge turned their attention to art. VII of the agreement according to which “the litigation arising from the execution of the present agreement shall be settled following the procedural order:
   a) Amiable way;
   b) By bringing the litigation before the court of jurisdiction of country R Football Federation, country R Professional League, AJF, FIFA and TAS, as the case may be”.

9. In view of the aforementioned clause, the DRC judge was of the opinion that art. VII of the agreement does not make clear reference to one specific national dispute resolution
chamber in the sense of art. 22 lit. b) of the aforementioned Regulations and does not even provides for the possibility of lodging a contractual dispute in front of FIFA. Therefore, the members of the Chamber deem that said clause can by no means be considered as a clear arbitration clause in favour either of the national deciding bodies, *i.e.* of the country R Football Federation or the country R Professional Football League, and, therefore, cannot be applicable. In this regard, the Chamber pointed out that this lack of clarity is also reflected in the Respondent’s argumentation since it refers to the alleged competence of the “jurisdictional committees” of the country R Professional Football League and also to “the commissions with jurisdictional attributions of the country R Football Federation” without further precision.

10. Having established that the first criterion for the recognition of the competence of a national decision-making body is not fulfilled in the present matter, the DRC judge deemed unnecessary to examine any further points which would need to be assessed before concluding to the competence of a national deciding body.

11. In view of the above, the DRC judge established that the Respondent’s objection to the competence of FIFA to deal with the present matter had 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. 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 H 100,000.

13. Subsequently, the members of the DRC judge analysed which edition of the Regulations should be applicable as to the substance of the matter. In this respect, the DRC judge confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations (editions 2010, 2012 and 2014) and considering that the claim in front of FIFA was lodged on 10 September 2012, the 2010 edition of said Regulations is applicable to the present matter as to the substance.

14. The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. In doing so, he started to acknowledge the facts of the case as well as the documents contained in the file.

15. In this respect, the members of the DRC judge acknowledged that it was undisputed by the parties that, they signed an agreement valid for four months as of 1 February 2012 until 30 June 2012, in accordance with which the player was entitled to receive, *inter alia*, a total salary of EUR 32,000 net.

16. The DRC judge further took due note that according to the Respondent, the parties subsequently concluded a contract on 1 March 2012, valid as of the date of signature until 31 May 2012. As per the contract, the player is to receive the total amount of EUR 24,000. However, the DRC judge observed that the Claimant denied having signed such document and relies on the agreement for the claimed amounts.

17. Having duly taken note of the aforementioned documentation presented by the Respondent and the Claimant, the DRC judge determined that the remuneration provided in the agreement coincides with the remuneration set forth in the contract and does not affect the financial claim of the Claimant. Consequently, the DRC judge concluded that the Claimant is to receive EUR 8,000 as monthly salary pursuant to the
agreement/contract and, in particular, EUR 24,000 for the period from March to May 2012.

18. The DRC judge further observed that the Claimant lodged a claim in front of FIFA against the Respondent seeking payment of the amount of EUR 24,000 relating to his salaries for March, April and May 2012. In particular, the DRC judge conceded that the Claimant indicated that the Respondent had only paid the amount of EUR 8,000 although he was apparently entitled to receive the total amount of EUR 32,000.

19. The Chamber duly noted that the Respondent, on the other hand, admitted that it owed the Claimant outstanding salaries but disagreed with the total amount due. In this respect, the Respondent wishes that the fine of EUR 6,000, which was imposed upon the Claimant on 21 May 2012, be deducted from the outstanding amount, along with the amount of EUR 5,880 allegedly paid by the Respondent after the signature of the contract. Consequently, the Respondent submits that it only owes the amount of EUR 12,120 to the Claimant.

20. The Claimant, though, vehemently contested having received the amount of EUR 5,880 and further objected to the deduction of the fine of EUR 6,000 from his receivables, pointing out inter alia that said fine is unilateral and was imposed on him without being duly notified.

21. In this regard, without expressing himself on the question as to whether or not the fine of EUR 6,000 is to be considered proportionate and acceptable, the DRC judge highlighted that said fine of EUR 6,000 was imposed on the Claimant by the Respondent by means of a decision of the Board of Directors of the Respondent rendered on 21 May 2012. In continuation, the DRC concurred that, as opposed to the issue relating to the outstanding payments on the basis of the agreement/contract, the execution of the disciplinary decision passed by the Respondent does not fall within the competence of the DRC Judge. Indeed, the execution of the internal decision relating to this fine is to be dealt with by the competent national authorities. Consequently, the DRC judge agreed that the Respondent’s debt towards the Claimant on the basis of the agreement/contract cannot be compensated with the aforementioned fine of EUR 6,000. As a result, the DRC Judge rejected the respective argument of the Respondent.

22. With regard to the payment of EUR 5,880 and the documentation provided by the Respondent in this respect, the DRC judge recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Similarly, the DRC judge referred to art. 9 par. 1 lit. e) of the Procedural Rules which stipulates that all documents of relevance to the dispute shall be submitted in the original version as well as translated into one of the official FIFA languages.

23. In this context, the DRC judge observed that the Respondent listed the payments made to the Claimant by means of a document elaborated by the Respondent itself. The DRC judge further noted that, although having been asked to do so, the Respondent did not provide a translated version of the said documentation enclosed to its submission in country R language only. Therefore, the DRC judge decided that said documentation could not be considered as a legitimate basis to justify any deductions from the amount claimed by the Claimant.

24. On account of the above and bearing in mind the general legal principle of pacta sunt servanda, the DRC judge decided that the Respondent is liable to pay to the Claimant outstanding remuneration in the total amount of USD 24,000.
25. In addition, taking into account the constant practice of the Dispute Resolution Chamber and in the absence of information in the agreement regarding the due date of the relevant remuneration, the DRC judge decided that the Respondent must pay to the Claimant interest of 5% p.a. until the date of effective payment. The interest starts as of 1 April 2012, 1 May 2012 and 1 June 2012 for each instalment of EUR 8,000.

26. Finally, the DRC judge concluded his deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

III. Decision of the DRC judge

1. The claim of the Claimant is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of EUR 24,000 plus 5% interest until the date of effective payment as follows:

   a. 5% p.a. as of 1 April 2012 on the amount of EUR 8,000;
   b. 5% p.a. as of 1 May 2012 on the amount of EUR 8,000;
   c. 5% p.a. as of 1 June 2012 on the amount of EUR 8,000.

5. In the event that the aforementioned amount plus interest is 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.

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

7. 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.

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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
For the DRC judge:

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Jérôme Valcke
Secretary General

Encl: CAS directives