Decision of the Dispute Resolution Chamber (DRC) judge

generated in Zurich, Switzerland, on 20 August 2014,

by Theo van Seggelen (Netherlands), DRC judge,

on the claim presented by the player,

Player S, from country C

as Claimant / Counter-Respondent

against the club,

Club O, from country C

as Respondent / Counter-Claimant

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

1. On 5 July 2012, Player S, from country K (hereinafter: the Claimant/Counter-Respondent) and Club O, from country C (hereinafter: the Respondent/Counter-Claimant), concluded an employment contract (hereinafter: the first contract) valid “for the period of one year for the football season 2012-2013”.

2. According to the first contract, the Claimant/Counter-Respondent was entitled to receive as remuneration the total amount of EUR 15,000 payable in 10 monthly instalments of EUR 1,500.

3. Moreover, on 6 July 2012, the parties concluded a “Contract of Image Rights” (hereinafter: the image rights agreement) according to which, the Claimant/Counter-Respondent was entitled to receive, inter alia, the total amount of EUR 35,000 payable in 10 monthly instalments of EUR 3,500 and a sign-on fee of EUR 5,000.

4. On 30 August 2012, the parties concluded an agreement (hereinafter: the recognition of debt) which provided as follows:

   “1. It is hereby agreed that the club owes to the player the total amount of EUR 28,000 for a football season 2012-2013.
   
   2. In case club pays the amount of EUR 19,500 on the following dates, then the whole amount provided by club (…) is considered to be settled:
   
   a. EUR 9,500 until the 5th/09/2012
   b. EUR 5,000 by cheque payable on the 27th/10/2012
   c. EUR 5,000 by cheque payable on the 27th/12/2012.

   In case of breach of the present agreement, i.e. nonpayment of any of the abovementioned amounts, by the way and period as mentioned above, the whole amount of EUR 28,000 will be immediately payable”.

5. On 20 November 2013, the Claimant/Counter-Respondent lodged a claim against the Respondent/Counter-Claimant in front of FIFA, requesting, inter alia, as follows:

   a. EUR 18,500 as outstanding salaries;
   b. “Award the player compensation for breach of the contract”;
   c. “Award the player an interest rate on the above amounts”.

6. In particular, the Claimant/Counter-Respondent explained that after the signing of the first contract and the image rights agreement, on 30 August 2012, the parties
“mutually terminated their employment relationship and a settlement agreement was signed between them on the same day”.

7. The Claimant/Counter-Respondent argues that according to the recognition of debt, the Respondent/Counter-Claimant recognized owing him the amount of EUR 28,000, amount which could be reduced to EUR 19,500 if the Respondent/Counter-Claimant would pay the amounts contained therein in time.

8. In this respect, the Claimant/Counter-Respondent argues that the Respondent/Counter-Claimant only paid him the first instalment in the amount of EUR 9,500 but failed to pay the other two instalments and therefore, he is entitled to claim for the entire EUR 28,000. Thus, the Claimant/Counter-Respondent argues that he is entitled to EUR 18,500.

9. In its reply to the claim, the Respondent/Counter-Claimant firstly disputed the competence of FIFA to adjudicate on the present matter since according to the latter, “there is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs (…) at national level”.

10. In continuation, the Respondent/Counter-Claimant argues that the first contract and the image rights agreement are null and void since, on 21 August 2012, the parties concluded a new employment contract (hereinafter: the second contract) which superseded the other two. In this respect, the Respondent/Counter-Claimant argues that this contract was the only one that was stamped by and submitted to the country C Football Association. The second contract provided the same remuneration for the Claimant/Counter-Respondent as the first contract.

11. Moreover, clause 3.a of the second contract stipulated that “Any dispute in respect of the contract shall be governed by the country C Football Association and/or FIFA regulations applicable and in force”.

12. In continuation, the Respondent/Counter-Claimant argues that on 25 August 2012, a mutual termination of the employment contract was signed (hereinafter: the termination agreement). The Respondent/Counter-Claimant stresses that the Claimant/Counter-Respondent did not render his services to the Respondent/Counter-Claimant on any of the 4 days between 21 August 2012 and 25 August 2012 and thus, he cannot be entitled to any amount.

13. In this respect, the termination agreement provided as follows:

   a. “Both parties agree and wish to terminate the contract of employment dated 21/08/2012.”
b. By signing the present agreement, the club has no claim against the player and will have no claim against the new football club of the player.

c. The club and the player mutually accept the fact that there is not any financial suspense or any other outstanding matter between the two parties as a result of any of the previous contract of employment…

d. It is mutually agreed that the club does not have any further economic obligations towards the player as a result of the cooperation between the two parties for the season 2011/12.

e. The player, will upon signing this Termination Agreement be a free player and the contract of employment dated on 21/08/2012 is cancelled”.

14. In regard of the recognition of debt signed on 30 August 2012, the Respondent/Counter-Claimant argues that the Claimant/Counter-Respondent “illegally induced the club to sign [the recognition of debt] and the club alleges that this is null and void. In addition to that, the said agreement was signed after the termination agreement dated 25/08/2012 and it cannot be enforceable”.

15. In his replica, the Claimant/Counter-Respondent stressed that the only valid contract between the parties is the recognition of debt signed on 30 August 2012. In this respect, the Claimant/Counter-Respondent argues that this document was signed by the parties and was concluded on a later date than any of the other agreements.

16. In addition, the Claimant/Counter-Respondent claims that the above argument is proven by the fact that the Respondent/Counter-Claimant paid to the Claimant/Counter-Respondent the first instalment in the amount of EUR 9,500 and that such payment was notified to the country C Football Association.

17. Furthermore, the Claimant/Counter-Respondent stresses that the allegations of the Respondent/Counter-Claimant in respect that the latter was induced by the Claimant/Counter-Respondent to sign the recognition of debt are unreasonable and have no legal basis.

18. As to the competence of FIFA to deal with the present matter, the Claimant/Counter-Respondent argues that clause 3.a of the contract is not a jurisdiction clause but merely a choice of applicable law and that the contract does not refer to any specific body at national level.

19. In its duplica and, in particular, regarding the payment made to the Claimant/Counter-Respondent in the amount of EUR 9,500, the Respondent/Counter-Claimant argues that “in order to avoid any sanctions resulting from the letter sent by the player to the Criteria Committee of the country C Football Association, the club considered it wiser to pay the amount and then proceed with legal actions against the player…”.
20. In this order of ideas, the Respondent/Counter-Claimant lodged a counterclaim against the Claimant/Counter-Respondent requesting the amount of EUR 9,500 which, according to the former, was unjustly paid to the latter.

21. Furthermore and pursuant to the request of FIFA, the Respondent/Counter-Claimant failed to provide any documentary evidence that would prove that the matter should be dealt with by the national arbitration bodies of the country C Football Association.

22. Despite having been asked to do so, the Claimant/Counter-Respondent did not respond to the counterclaim.

II. Considerations of the DRC judge

1. First of all, the DRC judge analysed whether it was competent to deal with the case at hand. In this respect, he took note that the present matter was submitted to FIFA on 20 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) is applicable to the matter at hand (cf. art. 21 of the Procedural Rules).

2. Subsequently the DRC judge referred to art. 3 par. 2 and par. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and 2 in conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2014), he is competent to decide on the present litigation, which concerns an employment-related dispute with an international dimension between a country K player and 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, in principle, he may adjudicate in the present dispute which value does not exceed currency of country H 100,000.

4. However, the DRC judge acknowledged that the Respondent/Counter-Claimant contested the competence of FIFA’s deciding bodies on the basis of clause 3.a of the second contract highlighting that “there is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs (…) at national level”.

5. In this regard, the DRC judge noted that the Claimant/Counter-Respondent rejected such position and insisted that FIFA has jurisdiction to deal with the present matter.
6. Taking into account the above, the DRC judge emphasised that, in accordance with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (editions 2012 and 2014), 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 DRC judge 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 he should, first and foremost, analyse whether the agreement at the basis of the present dispute actually contained a jurisdiction clause.

8. Having said this, the DRC judge turned his attention to the claim of the Claimant/Counter-Respondent and acknowledged that such has as basis the recognition of debt signed by the parties on 30 August 2012 and that said document does not contain a jurisdiction clause in favor of any national body.

9. In view of the above, the DRC judge was of the opinion that clause 3.a of the second contract is not applicable to the matter at hand and thus, 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.

10. Subsequently, the DRC judge analysed which edition of the Regulations should be applicable as to the substance of the matter. In this respect, he referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2012 and 2014), and, on the other hand, to the fact that the present claim was lodged in front of FIFA on 20 November 2013. The DRC judge concluded that the 2012 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.

11. 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 by acknowledging the abovementioned facts, the arguments of the parties as well as the documentation contained in the file. 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.

12. First of all, the DRC judge acknowledged that the parties had concluded a first contract on 5 July 2012, an image rights agreement on 6 July 2012, a second contract on 21 August 2012 and a termination agreement on 25 August 2012.

13. Furthermore, the DRC judge took note that on 30 August 2012, the parties signed a recognition of debt by means of which the Respondent/Counter-Claimant recognized owing and obliged itself to pay the amount of EUR 28,000 to the Claimant/Counter-Respondent which could be reduced to EUR 19,500 in case of the timely payment of the amounts contained therein.

14. In this respect, the DRC judge observed the allegations of the Respondent/Counter-Claimant in respect that the Claimant/Counter-Respondent “illegally induced [it] to sign” said document and that, since it was signed after the termination agreement dated 25 August 2012, it must be considered as not enforceable.

15. On his side, the Claimant/Counter-Respondent rejects the aforementioned allegation and stresses that the Respondent/Counter-Claimant made the first payment provided in the recognition of debt, which proves that the Respondent/Counter-Claimant considered said document as valid.

16. At this point, the DRC judge wished to recall that according to the legal principle of the burden of proof contained in art. 12 par. 3 of the Procedural Rules, any party claiming a right on the basis of an alleged fact carries the burden of proof. In casu, the Respondent/Counter-Claimant bears the burden of proving that the Claimant/Counter-Respondent had induced the Respondent/Counter-Claimant in such a way that it signed the recognition of debt in clear error.

17. With the above-mentioned consideration in mind, the DRC judge came to the conclusion that the Respondent/Counter-Claimant failed to provide any kind of evidence that could corroborate that in fact, it signed the recognition of debt due to the inducement of the Claimant/Counter-Respondent. What is more, the DRC judge emphasised that the Respondent/Counter-Claimant had already started executing said recognition of debt by paying to the Claimant/Counter-Respondent the amount of EUR 9,500.

18. Moreover and while focusing on the allegation of the Respondent/Counter-Claimant that since the recognition of debt was signed after the termination agreement, it must be considered as not “enforceable”, the DRC judge did not find any legal basis to upheld such argument, the recognition of debt clearly being the last agreement concluded between the parties.
19. On account of the above, the DRC judge decided, while rejecting the Respondent/Counter-Claimant’s counterclaim, that the recognition of debt dated 30 August 2012 is valid and thus, the Respondent/Counter-Claimant must fulfil its obligations contained therein.

20. As a consequence and in accordance with the general principle of law *pacta sunt servanda*, the Respondent/Counter-Claimant must pay to the Claimant/Counter-Respondent the amount of EUR 18,500 plus 5% interest p.a. as from 20 November 2013.

21. The DRC judge concluded his deliberations by stating that any further claim lodged by the Claimant/Counter-Respondent is rejected.

### III. Decision of the DRC judge

1. The claim of the Claimant/Counter-Respondent, Player S, is admissible.

2. The claim of the Claimant/Counter-Respondent is partially accepted.

3. The Respondent/Counter-Claimant, Club O, has to pay to the Claimant/Counter-Respondent, **within 30 days** as from the date of notification of this decision, the amount of EUR 18,500 plus 5% interest p.a. on said amount as from 20 November 2013 until the date of effective payment.

4. In the event that the amount due to the Claimant/Counter-Respondent in accordance with the above-mentioned number 3. is not paid by the Respondent/Counter-Claimant within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

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

6. The counterclaim of the Respondent/Counter-Claimant 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 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:

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For the DRC judge:

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Jérôme Valcke
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Encl. CAS directives