

Decision of the Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 13 October 2010,

by **Theo van Seggelen** (Netherlands), DRC judge,

on the claim presented by the player,

M,

as Claimant

against the club,

A,

as Respondent

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 10 February 2009, the Brazilian player, M, the Claimant, and the club, A, the Respondent, concluded an employment contract valid from the date of signature until 31 May 2010.
2. According to the above-mentioned contract the Claimant would receive, during the season 2008/2009, the amount of EUR 8,000 payable in 4 instalments payable as from 28 February 2009 and the last instalment on 31 May 2009. During the season 2009/2010 the Claimant would receive the amount of EUR 20,000 payable in 10 instalments of EUR 2,000 per month each as from 30 August 2009 and the last instalment on 31 May 2010.
3. According to clause 2a of the above-mentioned contract, the parties agreed that: *" if the club undergoes to the second division, the contract will no longer be valid and the player must terminate his services having no further demands" .*
4. On 11 February 2009, the parties signed an additional contract according to which the Respondent agreed to pay, during the season 2008/2009, the amount of EUR 12,000 in 4 instalments of EUR 3,000 each as from 28 February 2009 and until 31 May 2009. For the season 2009/2010 the amount of EUR 40,000 payable in 10 instalments of EUR 4,000 payable as from 30 August 2009 and until 31 May 2010. One return ticket for the family and the club must provide for accommodation and car.
5. On 21 October 2009, the Claimant contacted FIFA explaining that on 3 June 2009 he had put the Respondent in default for outstanding salaries amounting to EUR 17,000. The Claimant requested the payment until 15 June 2009. In this respect, the Claimant explained that the Respondent never paid the outstanding amount but on 18 June 2009, the Respondent terminated the contract in writing due to the club's relegation to the second division.
6. As a result, the Claimant deems that the Respondent has breached the contract and should pay him the outstanding amount of EUR 17,000, the rest value of the contract in the amount of EUR 60,000 as compensation, an amount to be established by the decision-making body as damage and legal expenses.
7. On 23 August 2010, the Respondent underlined that according to the contract the parties had agreed that the Claimant would render his services to the club until 31 May 2009 and that the contract would be extended for the season 2009/2010 in case the team remained in the "A" division. However, and in case the team would be relegated

to the "B" division it was contractually agreed that the club could terminate the contract and the player is stopped from having any demands.

8. Moreover, the Respondent deemed that the parties had agreed upon a total remuneration of EUR 8,000 payable in 4 instalments payable as from 28 February 2009 and the last instalment payable on 31 May 2009. The Respondent emphasised that it had paid the amount of EUR 3,500 to the Claimant. Moreover, a fine in the amount of EUR 2,000 was imposed on all players due to the fact that the Respondent had been relegated.
9. Finally, the Respondent explained that due to the fact that it had been relegated it had terminated the contract and informed the Claimant on 18 June 2009. As a result, the Respondent deems that the Claimant's claim should be dismissed. The Respondent provided a copy of the contract already provided by the Claimant, payment receipts for the amount of EUR 3,500 as well as a copy of the termination letter sent to the legal representative of the Claimant.
10. On 1 September 2010 and upon FIFA's request, the player informed FIFA that he had not signed any employment contract during the period as from June 2009 until 31 May 2010 and that he was still unemployed.

II. Considerations of the DRC judge

1. First of all, the DRC judge analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was submitted to FIFA on 21 October 2009. Consequently, the 2008 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: Procedural Rules) are applicable to the matter at hand (cf. art. 21 paras. 2 and 3 of the Procedural Rules).
2. Subsequently, the DRC judge referred to art. 3 paras. 2 and 3 of the Procedural Rules and confirmed that in accordance with art. 24 paras. 1 and 2 and art. 22 lit. b) of the Regulations on the Status and Transfer of Players he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Brazilian player and a Cypriot 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 employment-related dispute.

4. Furthermore, the DRC judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 paras. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2010), and considering that the present claim was lodged on 21 October 2009, the 2009 edition of the said regulations (hereinafter: Regulations) is applicable to the matter at hand as to the substance.
5. The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. The DRC judge started by acknowledging the facts of the case as well as the documentation contained in the file.
6. In particular, the DRC judge acknowledged that the Claimant and the Respondent signed an employment contract on 10 February 2009 valid until 31 May 2010, a copy of which was presented by the Claimant along with his statement of claim, in accordance with which the player was entitled to receive the amount of EUR 8,000 payable in 4 instalments as from 28 February 2009 and the last instalment on 31 May 2009. During the season 2009/2010 the amount of EUR 20,000 payable in 10 instalments of EUR 2,000 per month each as from 30 August 2009 and the last instalment on 31 May 2010. In addition the parties signed an additional contract on 11 February 2009, according to which the Respondent agreed to pay, during the season 2008/2009, the amount of EUR 12,000 in 4 instalments of EUR 3,000 each as from 28 February 2009 and until 31 May 2009. For the season 2009/2010 the amount of EUR 40,000 payable in 10 instalments of EUR 4,000 payable as from 30 August 2009 and until 31 May 2010.
7. The DRC judge noted that the player claims that the Respondent failed to fulfil its contractual obligations. In particular, the Claimant explained that on 3 June 2009 he had requested the Respondent to pay the outstanding salaries amounting to EUR 17,000 until 15 June 2009, however, the Respondent never paid the outstanding amount but instead on 18 June 2009, the Respondent terminated the contract in writing due to the club's relegation to the second division. As a result, the Claimant deems that the Respondent has breached the contract and should pay him the outstanding amount of EUR 17,000, the rest value of the contract in the amount of EUR 60,000 as compensation, an amount to be established by the decision-making body as damage and legal expenses.
8. The Respondent, for its part, underlined that according to the contract the parties had agreed that the Claimant would render his services to the club until 31 May 2009 and that the contract would be extended for the season 2009/2010 in case the team remained in the "A" division. However, and in case the team would be relegated to the

"B" division it was contractually agreed that the club could terminate the contract without any further financial obligation. In particular, the club referred to clause 2a of the contract, which stipulates that: *" if the club undergoes to the second division, the contract will no longer be valid and the player must terminate his services having no further demands" .*

9. Moreover, the Respondent deemed that the parties had agreed upon a total remuneration of EUR 8,000 payable in 4 instalments as from 28 February 2009 and the last instalment payable on 31 May 2009. Also, the Respondent emphasised that it had paid the amount of EUR 3,500 to the Claimant and that a fine in the amount of EUR 2,000 was imposed on all players due to the fact that the Respondent had been relegated. Finally, the Respondent explained that due to the fact that it had been relegated it had terminated the contract and informed the Claimant on 18 June 2009. As a result, the Respondent deems that the Claimant's claim should be dismissed.
10. In continuation, the DRC judge referred to the contracts at the basis of the dispute, signed on 10 and 11 February 2009, and underlined that the Claimant was entitled to receive during the season 2008/2009 the total amount of EUR 20,000 payable in four instalments of EUR 5,000 each and due by the end of February 2009, March 2009, April 2009 and May 2009 as well as during the season 2009/2010 the total amount of EUR 60,000 payable in ten instalment of EUR 6,000 as from 30 August 2009 until 31 May 2010.
11. In this respect, the DRC judge considered that based on all documents and statements at disposal, the Respondent terminated the contract on 18 June 2009 and that during the season 2008/2009 the Respondent should have paid to the Claimant the amount of EUR 20,000. Equally, the deciding body noted that the Respondent emphasised that during the said season it had paid to the Claimant the amount of EUR 3,500 only and had imposed a fine amounting to EUR 2,000 on the player due to the club's relegation to the second division.
12. In this respect, the DRC judge concluded that by the time the Respondent prematurely terminated the employment contract it had not fulfilled its contractual obligations towards the player, i.e. remunerate the player for his services rendered to the club. Moreover, the DRC judge took into account that the Respondent failed to provide any documentary evidence so as to establish the legitimacy of the fine imposed on the Claimant.
13. In continuation, the DRC judge considered that it is uncontested by the parties that the Claimant had rendered his service to the Respondent during the season 2008/2009 and that the Respondent only paid him the amount of EUR 3,500.

14. In this context, the DRC judge underlined that, as a general principle, a club is obliged to remunerate a player, as agreed between the parties, for the period of time during which he has rendered his services to the club, unless the club can justify the non-payment of the agreed remuneration.
15. In this respect, the DRC judge emphasised that the Respondent has not provided any explanation or documentary evidence to justify its non-fulfilment of its contractual obligations towards the Claimant during the season 2008/2009 and therefore has breached the contract without just cause.
16. As a result, the DRC judge concluded that the Respondent is obliged to pay to the Claimant the outstanding salaries for the period during which the Claimant rendered his services to the Respondent in the amount of EUR 16,500, corresponding to the difference between the salaries paid and the salaries agreed between the parties.
17. Equally, and considering all of the above as well as the particularities of the matter at stake the DRC judge decided that the Respondent is liable to pay to the Claimant compensation for the breach of the contract in the amount of EUR 20,000.
18. Finally, and with regard to the claimed legal expenses, the DRC judge referred to the well-established jurisprudence in this respect and rejected the claim with regard to the reimbursement of the legal expenses of the Claimant.
19. Taking into account all of the above, the DRC judge decided that the Respondent must pay the amount of EUR 36,500 to the Claimant.

III. Decision of the DRC judge

1. The claim of the Claimant, M, is partially accepted.
2. The Respondent, A, has to pay to the Claimant, M, the amount of EUR 36,500 **within 30 days** as from the date of notification of this decision.
3. If the aforementioned sum is not paid within the above-mentioned deadline, interest at the rate of 5% per year will apply as of expiry of the stipulated time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
4. Any further request filed by the Claimant, M, is rejected.

5. The Claimant, M, is directed to inform the Respondent, A, 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 art. 63 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

Jérôme Valcke
Secretary General

Encl. CAS directives