Decision of the
Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 13 December 2010,

by **Philippe Diallo** (France), DRC judge,

on the claim presented by the player,

O,

as *Claimant / Counter-Respondent*

against the club,

M,

as *Respondent / Counter-Claimant*

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 14 August 2007, the club, M (hereinafter: *the club* or *the Respondent / Counter-Claimant*) signed an employment contract with the player O (hereinafter: *the player* or *Claimant / Counter-Respondent*) valid from the date of signature until 30 June 2008.

2. The employment contract provides for a total remuneration for the player of EUR 10,000 to be paid in ten monthly instalments of EUR 1,000, the first of which being due on 10 September 2007.

3. An agreement was also concluded by the parties on 24 July 2007, according to which:
   a) the club would finance the player's flight tickets from B to P and return;
   b) the club would pay EUR 15,000 to the player in 10 monthly instalments of EUR 1,500, beginning on 10 September 2007;
   c) the club would be ''*responsible for the player's permanence, during the duration of the contract*''.

4. On 5 March 2008 the player lodged a claim in front of FIFA, which was later completed on 2 April 2008. The player asked to be awarded:

   a) EUR 2,000 as outstanding salaries (September and December 2007). The player alleges that, only his salaries of October and November 2007 were paid;

   b) EUR 6,000 as compensation for breach of contract, i.e. the salaries the player was entitled to receive until the end of the employment contract (January to June 2008);

   With regard to his request for the payment of compensation, the Claimant / Counter-Respondent refers to the ''P Employment Blanquet'' for these payments. Said regulations, which are included in article 14 of the employment contract, state in article 43 that the player has the right to terminate the contract with just cause if the club has delayed the payment of the salary by 30 days and the player has a right to compensation amounting to the salaries the player is entitled to receive until the end of the contract, but only if the player informs the club of his intentions and the club does not rectify the situation within 3 days.

   c) to be released from the employment contract.

5. The Claimant / Counter-Respondent explains that he flew back to country B for Christmas 2007 with the club's authorisation and was refused entry onto P territory on 22 January 2008, because he failed to present a valid visa on his return.

6. Upon the player's return to country B he allegedly attempted to contact the club several times in view of resolving the situation and returning to country P to play for the club, but apparently received no answer.

7. The Claimant / Counter-Respondent insists that the Respondent / Counter-Claimant was responsible to provide him with a work permit valid for the duration of the employment contract, that the club had committed to this, and that the validity of the contract cannot be subject to the granting of a work permit. Consequently, the player claims that the club breached the employment contract for not having provided him with the relevant work permit.

8. In its reply to the claim, the Respondent / Counter-Claimant states that the player flew to country B with neither the club's permission nor its knowledge of his travels. The club added that, returning to country P on 22 January 2008 was late anyhow, since two league games had already been played. The club adds that it only found out the player was in country B early January as it requested his presence for training.

9. Furthermore, the Respondent / Counter-Claimant insists that it was not responsible to provide the Claimant / Counter-Respondent with the visa. In this respect, the club allegedly informed the player he had to require a work visa from the competent entity in order to stay legally in country P. The club equally claims having provided the player with all the necessary documents for his visa application and that it was not aware the player had not made the relevant visa application.

10. The Respondent / Counter-Claimant concludes that the Claimant / Counter-Respondent failed to respect the club's indications in order to regularise his situation in the country P and is therefore culpable for not being able to fulfil his contractual obligations, i.e. making himself available for the club. Therefore, the Respondent / Counter-Claimant argues that the Claimant / Counter-Respondent unilaterally terminated the contract without just cause and lodged a counterclaim against the player, requesting the payment of compensation without, however, specifying an amount.

11. According to the club, all payments due to the player on the date of his departure to country B had been granted (instalments from September to December 2007).

12. In his replica, the Claimant / Counter-Respondent insists that the club had never told him to apply for the visa by himself and in particular that the club had committed to provide him with the visa by signing the agreement of 24 July 2007 (cf. number I./3. above).

13. Furthermore, the player argues that the club was aware of the player's journey to the country B, because of the agreement dated 24 July 2007, which states that the club would pay for the player's flight ticket from B-P and return. Moreover, the player stated that the club provided him with the ticket.

14. In its duplica, the Respondent / Counter-Claimant confirms its position and contests the player's reference to the agreement dated 24 July 2007 by arguing that this was only a provisory agreement prior to the signature of the employment contract, i.e. a promise of work, and that the employment contract is only valid from 14 August 2007. The club added that, at the time said provisory agreement was signed, the player entered the P territory with a temporary visa in order to pass a trial with the club. Concerning the flight tickets, the club explains that it was willing to pay for the player's original arrival in country P in July 2007 and his departure at the end of the contract. Finally, the club specified the amount requested as compensation for breach of contract and asked for the payment of EUR 6,000, consisting of the remaining salaries from January to June 2008 (6 x EUR 1,000).

15. The player informed FIFA that he had not signed a new employment contract since his return to country B, allegedly because clubs fear having to pay compensation to the club M.

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, the DRC judge referred to art. 21 par. 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008). The present matter was submitted to FIFA on 5 March 2008, thus before 1 July 2008. Consequently, he concluded that the 2005 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) is applicable to the matter at hand (cf. art. 18 par. 2 and 3 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 par. 2 in conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2010) he is competent to decide on the present litigation, which concerns an employment-related dispute with an international dimension between a player and a club.

3. 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 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (editions 2009 and 2010) and considering that the present claim was lodged on 5 March 2008, the 2008 edition of said Regulations (hereinafter: *the Regulations*) is applicable to the present matter as to the substance.

4. 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 that, on 14 August 2007, the parties in the dispute at stake concluded an employment contract valid as from the date of signature until 30 June 2008, providing for a total remuneration of EUR 10,000 in favour of the Claimant / Counter-Respondent.

5. Analysing the facts pertaining to the matter at hand, the DRC judge noted that the Claimant / Counter-Respondent returned to country B for Christmas 2007 and that upon his return to country P on 22 January 2008, he was refused entrance onto P soil for not having the necessary visa.

6. The DRC judge took note, on the one hand, that the Claimant / Counter-Respondent asserted that the Respondent / Counter-Claimant had breached the contract without just cause by not providing him with an employment visa valid for the entire duration of the relevant employment relationship and therefore, the Claimant / Counter-Respondent demands the payment of EUR 2,000 as outstanding salaries for September and December 2007, as well as EUR 6,000 corresponding to the residual value of the contract as from January 2008.

7. The DRC judge equally acknowledged, on the other hand, that the Respondent / Counter-Claimant rejected the Claimant / Counter-Respondent's claim, alleging that the player breached the contract without just cause by failing to make himself available for the club in order to fulfil his contractual obligations. In this context, the DRC judge noted that the Respondent / Counter-Claimant demands the payment of EUR 6,000 as compensation for breach of contract, corresponding to the remaining value of the contract as from January 2008.

8. In this context, the DRC judge first and foremost focussed his attention on the player's claim relating to outstanding salaries.

9. In this regard, the DRC judge noted that, despite claiming having paid the monthly salaries due to the Claimant / Counter-Respondent until the latter's departure, the Respondent / Counter-Claimant failed to provide FIFA with any

documentary evidence that the salaries had been paid, in accordance with art. 12 par. 3 of the Procedural Rules, which stipulates that any party deriving a right on the basis of an alleged fact shall carry the burden of proof.

10. In this context, the DRC judge held that, in accordance with the basic legal principle of *pacta sunt servanda*, the Respondent / Counter-Claimant must fulfil its obligations as per the contract entered into with the Claimant / Counter-Respondent and, consequently, pay the outstanding remuneration which is due to the latter.

11. On account of the above, the DRC judge decided that the Respondent / Counter-Claimant was liable to pay to the Claimant / Counter-Respondent the amount of EUR 2,000 as outstanding salaries for the months of September and December 2007.

12. In continuation, the DRC judge turned his attention to the allegation of the Claimant / Counter-Respondent pertaining to the lack of a valid visa, which the player considered to constitute a breach of the employment contract by the club. In this respect, the DRC judge took note of the argumentation advanced by the Respondent / Counter-Claimant. First and foremost, the DRC judge noted that the Respondent / Counter-Claimant has not contested that the player was refused entrance onto P soil for not having the necessary visa. In particular, the DRC judge observed that the Claimant / Counter-Respondent had provided a document, issued by the P border authorities, from which it could be noted that the player was not allowed back into the territory of P for the aforementioned reason.

13. Subsequently, the DRC judge noted the allegation of the Respondent / Counter-Claimant that it was the player's responsibility to apply for the pertinent visa and that it had provided the latter with the necessary documentation for the relevant visa request.

14. In this context, the DRC judge referred to art. 18 par. 4 of the Regulations which stipulates, *inter alia*, that the validity of a contract may not be made subject to the grant of a work permit.

15. In this respect, the DRC judge referred to the well-established jurisprudence of the Dispute Resolution Chamber and emphasised that the responsibility to obtain the necessary visa prior to the signing of the employment contract or during its period of validity is incumbent on the club, i.e. the Respondent / Counter-Claimant and that, therefore, the argumentation of the Respondent / Counter-Claimant could not be allowed.

16. In view of the aforementioned considerations, including the club's failure to pay the salaries of the Claimant / Counter-Respondent as established above, the DRC judge decided to reject the counterclaim lodged by the Respondent / Counter-Claimant and to accept the Claimant / Counter-Respondent's claim, according to which the Respondent / Counter-Claimant had acted in breach of the employment contract without just cause.

17. Having established that the Respondent / Counter-Claimant is to be held liable for the early termination of the employment contract without just cause in January 2008, the DRC judge focussed his attention on the consequences of such breach of contract. Taking into consideration art. 17 par. 1 of the Regulations, the DRC judge decided that the Claimant / Counter-Respondent is entitled to receive from the Respondent / Counter-Claimant an amount of compensation for breach of contract in addition to any outstanding payments on the basis of the relevant contract.

18. Subsequently, the DRC judge referred to art. 17 par. 1 of the Regulations, in particular to the non-exhaustive enumeration of the objective criteria which need to be taken into account. The members of the Chamber 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, and depending on whether the contractual breach falls within the protected period.

19. In application of the relevant provision, the DRC judge held that he first of all had to clarify as to whether the pertinent employment contract contains a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract.

20. Article 14 of the employment contract (cf. point I./4. lit. b) above) refers to the ''P Employment Blanquet'', which states in article 43 that the player has the right to terminate the contract and is entitled to the payment of salaries due to the player until the end of the employment contract if the payment of the salary is delayed by 30 days. However, the DRC judge noted that said article also stipulates that the aforementioned consequences are applied only if the player informs the club of his intentions and the club does not rectify the situation within 3 days. In this respect, the DRC highlighted that from the documentation on file it could not be established that the formal prerequisites

set out by this article in order to be applicable had been respected. Therefore, the DRC judge determined that in the case at hand, the relevant article of the employment contract could not be taken into consideration for the calculation of the compensation to be awarded to the Claimant / Counter-Respondent.

21. As a consequence, the DRC judge determined that the amount of compensation payable by the Respondent / Counter-Claimant to the Claimant / Counter-Respondent had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that the 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.

22. In this context, the DRC judge took into account that the Claimant / Counter-Respondent asked for the payment of EUR 6,000 as compensation for breach of contract and that this amount corresponds to the salaries he would have been entitled to receive in accordance with the employment contract as from the termination of the employment contract in January 2008 until June 2008. Furthermore, the DRC judge noted that the Claimant / Counter-Respondent had apparently remained unemployed for the whole contractual period after the occurrence of the breach of contract by the Respondent / Counter-Claimant in January 2008.

23. In view of the aforementioned considerations and the specificities of the case at hand, the DRC judge decided that the Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent EUR 6,000 as compensation for breach of contract corresponding to the residual value of the contract, *i.e.* salaries from January 2008 until June 2008, which was to be considered reasonable and justified as compensation for breach of contract.

24. Consequently, the DRC judge decided that the Respondent / Counter-Claimant has to pay the total amount of EUR 8,000 to the Claimant / Counter-Respondent, consisting of EUR 2,000 concerning outstanding salaries and of EUR 6,000 as compensation for breach of contract.

25. The DRC judge concluded his deliberations on the present dispute by deciding that the counterclaim of the Respondent / Counter-Claimant is rejected.

III. Decision of the DRC judge

1. The claim of the Claimant / Counter-Respondent, O, is accepted.

2. The Respondent / Counter-Claimant, M, has to pay to the Claimant / Counter-Respondent, O, the amount of EUR 8,000 **within 30 days** as from the date of notification of this decision.

3. If the aforementioned sum is not paid within the aforementioned deadline, interest at the rate of 5% per year will apply as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

4. The counterclaim of the Respondent / Counter-Claimant, M, is rejected.

5. The Claimant / Counter-Respondent, O, is directed to inform the Respondent / Counter-Claimant, M, 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. 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:

Court of Arbitration for Sport
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For the Dispute Resolution Chamber:

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Markus Kattner
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Encl. CAS directives