

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

Z,

as Claimant

against the club

A,

as Respondent

regarding an employment-related dispute
between the parties

I. Facts of the case

1. On 11 December 2006, the player, Z (hereinafter: *the Claimant*), and the club, A (hereinafter: *the Respondent*), concluded an employment contract valid “for the season 2006/2007”, *i.e.* as from the date of registration of the player with the club until 31 May 2007.
2. According to the employment contract, the Claimant was entitled to receive a remuneration of EUR 12,500, payable in five equal instalments of EUR 2,500 at the end of each month as of 30 January 2007.
3. By means of a letter dated 19 June 2007, the Claimant had informed the Respondent of its arrears of payment in the amount of 4,000.
4. On 24 July 2007, the Claimant lodged a claim at FIFA against the Respondent claiming that the Respondent did not fulfil its financial obligations. In particular, the Claimant argued that the Respondent did not pay the salary of the months of March, April and May 2007, and, therefore, requested to be awarded an outstanding amount of 4,000.
5. Furthermore, the Claimant stated that the previous payments were made in X instead of EUR as concluded in the employment contract. In addition, the Claimant claimed that he assumed to receive EUR 12,500 in five equal instalments as agreed in the employment contract, but on the contrary he received 1,500 per month.
6. Moreover, the Claimant stated that he received his monthly salary in irregular instalments and different amounts, *i.e.* once he received 200, then 300 and so on.
7. In this respect, the Claimant argued that the claimed amount of 4,000 is the total amount that has not been paid during the period of his employment with the Respondent. In particular, the claimed amount is made of the outstanding salaries for April and May 2007, *i.e.* two times 1,500, and a part of the salary for March 2007.
8. In its response, the Respondent rejected the claim stating that it paid the total amount agreed in the employment contract of EUR 12,500, having paid the last instalment on 15 May 2007, as well as the amount of EUR 4,000, paid on 31 May 2007. In this respect, the Respondent provided a totally illegible copy of a receipt allegedly signed by the Claimant.
9. The translation of said receipt stated that the Claimant received 4,000 for the “*full and final payment for the season 2006/2007*”.
10. However, despite having been invited to do so twice, the Respondent did not provide a legible version of the receipt.

II. Considerations of the DRC judge

1. First of all, the Dispute Resolution Chamber judge (hereinafter: *DRC judge*) analysed whether he was competent to deal with the case at hand. In this respect, the judge first referred to art. 18 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (DRC; edition 2005) in conjunction with 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 24 July 2007, as a consequence, the DRC judge concluded that the 2005 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (DRC; hereinafter: *the Procedural Rules*) are applicable to the matter at hand.
2. Subsequently, the DRC judge referred to art. 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2010), the DRC 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. In particular, and in accordance with art. 24 par. 2 lit. i) of the Regulations on the Status and Transfer of Players (edition 2010), the DRC judge confirmed that he may adjudicate in the present dispute which value does not exceed 100,000.
4. In continuation, 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 2 of the Regulations on the Status and Transfer of Players (edition 2010, 2009 and 2008) and also considering that the present claim was lodged in front of FIFA on 24 July 2007, the previous edition of the Regulations for the Status and Transfers of Players (edition 2005; hereinafter: *the 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. He started by acknowledging that the Claimant and the Respondent had entered into an employment contract, valid as from the date of registration of the player until 31 May 2007.
6. Equally, the DRC judge observed that the parties had agreed a remuneration of EUR 12,500, payable in five equal instalments of EUR 2,500.

7. In continuation, the DRC judge noted that the Claimant lodged a claim against the Respondent requesting the payment of an amount of 4,000, allegedly corresponding to the unpaid instalments of April and May 2007, each of 1,500, as well as part of March 2007.
8. On the other hand, the DRC judge observed that the Respondent rejected the claim arguing that it had paid the total amount of EUR 12,500 as agreed in the contract.
9. Taking into account all the above, the DRC judge referred to art. 12 par. 3 of the Procedural Rules according to which any party deriving a right from an alleged fact shall carry the burden of proof. Therefore, the DRC judge examined the Respondent's allegation in light of the aforesaid article and turned its attention to the evidence on file.
10. In this respect the DRC judge noted that the Respondent provided a document, allegedly signed by the Claimant, in order to confirm the payments. However, this document was totally illegible.
11. In continuation, the DRC judge noticed that despite having been invited to do so twice, the Respondent did not provide a legible copy of the payment receipt. Therefore, the DRC judge was not in a position to take said document into account.
12. Consequently, the DRC judge concluded that the Respondent did not provide any documentary evidence for the payment of EUR 12,500.
13. Taking into account the documentation presented by the Claimant in support of his petition, the DRC judge concluded that the Claimant had substantiated his claim pertaining to the outstanding salaries for April and May 2007 with sufficient documentary evidence.
14. Moreover, the DRC judge referred to the pertinent employment contract, according to which the remuneration should be paid in Euro. However, the Claimant asked for X.
15. In continuation, the DRC judge noticed that the Claimant had failed to provide any documentary evidence for a contract amendment regarding the currency of the payable salary (cf. art. 12 par. 3 of the Procedural Rules).
16. Consequently, the DRC judge clarified that the relevant currency of the amount due is Euro.

17. With regard to the outstanding part of the salary of March 2007, the DRC judge noted that the Claimant failed to specify for which time period, *i.e.* the number of days, the respective amount should be due. Therefore, the DRC judge concluded that this part of the claim was not enough substantiated and had to be rejected (art. 9 par. 2 of the Procedural Rules).
18. On account of the aforementioned considerations, the DRC judge established that the Respondent failed to remit the Claimant's salaries for April and May 2007 in the total amount of EUR 5,000.
19. Consequently, the DRC judge decided that in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant outstanding salaries in the total amount of EUR 5,000.
20. Finally, and recalling that the Claimant had requested the payment of the salaries from April and May 2007, as well as part of March 2007, the DRC judge ruled that the claim of the Claimant is partially accepted.

III. Decision of the DRC judge

1. The claim of the Claimant, Z, is partially accepted.
2. The Respondent, A, has to pay to the Claimant the amount of EUR 5'000, 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 its consideration and a formal decision.
4. Any further claim filed by the Claimant is rejected.
5. The Claimant, Z, 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 Dispute Resolution Chamber 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 Dispute Resolution Chamber

Markus Kattner
Deputy Secretary General

Enclosed: CAS directives