

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 7 April 2011,

in the following composition:

Geoff Thompson (England), Chairman ad interim

Michele Colucci (Italy), member

Jon Newman (USA), member

Mario Gallavotti (Italy), member

Todd Durbin (USA), member

on the claim presented by the player,

E,

as Claimant

against the club,

V,

as Respondent

regarding a dispute between the parties

I. Facts of the case

1. According to the player, E (hereinafter: player or Claimant), on 13 June 2008, he entered into an employment contract with the club, V (hereinafter: club or Respondent), duly authenticated before a notary public, and allegedly valid during the 2008-09 and 2009-10 seasons.
2. The Claimant maintains that in accordance with this alleged employment contract he was to receive the total amount of EUR 130,000 for the two seasons.
3. Along with his statement of claim, the Claimant presented a copy of an invoice dated 13 June 2008 issued by a notary public to the club referring to a "*signature recognition*".
4. Furthermore, the Claimant submits that, on that day, the Respondent announced the hiring of the player on its official website.
5. However, according to the Claimant he was never given a copy of said employment contract.
6. The Claimant asserts that, in July 2008, the Respondent announced via the media that it was no longer interested in the player's services, without having informed him personally. On 4 August 2008, he wrote to the Respondent asking for an amicable solution. The Respondent then answered *inter alia* denying that an employment contract was signed between the parties, as negotiations had been cut off after the club had received confirmation that the player was still contractually bound to his former club, as opposed to the information given by the player. The Claimant, however, asserts that such statement is incorrect and that the Respondent has always been informed about the situation with his former club.
7. On account of the above, on 6 October 2008, the Claimant lodged a claim against the Respondent in front of FIFA asking that it be established that the club acted in breach of the employment contract. Furthermore, the Claimant asks to be awarded payment of compensation amounting to EUR 130,000 plus the amount of EUR 10,000 for moral damages.
8. In addition, the Claimant asks that the club be sanctioned for its misconduct and ordered to present a copy of the relevant employment contract.
9. In reply to the claim, the Respondent admits that it started negotiations with the representative of the Claimant, during which negotiations the club had

communicated its condition that the player had to be without contractual ties to another club. The representative of the Claimant had allegedly assured that the player was not legally bound to any other club.

10. Considering the intention to employ the Claimant, the Respondent announced such fact on its website during the negotiations stage.
11. According to the Respondent, during the negotiations stage, however, it received an e-mail from the player's former club explaining that the player was still bound to the latter.
12. In the light of the player's representative's misrepresentation of the facts surrounding the player's contractual ties to his former club, the Respondent decided to cease the **negotiations**.
13. The Respondent points out that even if the negotiations had been concluded, this situation would have been a just cause "*impeditive of the agreement's legal value*".
14. For these reasons, the Respondent rejects the player's claim.
15. In his replica, the Claimant points out that the copy of the e-mail presented by the club in support of its position does not indicate his former club as a sender and, furthermore, it contains false assumptions. He asserts that the Respondent had been duly informed about his situation with his former club, namely, that he had left his former club as the latter had not paid him his salaries, as a result of which he was claiming those salaries in front of a labour court and that he had been bound to his former club for at least 3 years and therefore was able, under the FIFA regulations, to leave and register with another club.
16. The Claimant further points out that the Respondent has not disputed the invoice issued by the notary public (cf. point I./3. above) and, thus, the Respondent recognizes the authentication of the player's signature, which, according to the Claimant, is required when presenting the employment contract to the professional league for registration.
17. Furthermore, the Claimant asks that the Dispute Resolution Chamber orders the Respondent to present the pertinent employment contract and hears the testimonial of two persons indicated in his claim.
18. The Claimant finds it odd and uncommon that prior to signing on a player, a club would announce the hiring of a player while still being in negotiations, as such

statement, apart from being false, could have legal implications and put a club in a more fragile bargaining position.

19. Finally, the Claimant points out that in the hypothetical situation that he would not have informed the club in detail of his contractual ties with his former club, a club would always be obliged to verify such facts prior to employing a player.
20. In its duplica, the Respondent reiterates that it cancelled the negotiations with the player and decided not to sign any employment contract with him in order to avoid any possible financial and sporting consequences relating to the contractual situation of the player with his former club.
21. It also points out that should such employment contract, as claimed by the player, exist, it would have been registered with the P Football Federation and P professional league, which never happened as can be confirmed by such institutes.
22. For these reasons, in particular, the inexistence of an employment contract between the parties, the Respondent rejects the claim put forward by the Claimant.
23. For the sake of completeness, the Respondent points out that employment related disputes between players and clubs participating in the P first professional league fall within the competence of the parital committee of the P professional football league in accordance with the P collective bargaining agreement and the template clause inserted in all standard employment contracts. This would prevent the Dispute Resolution Chamber from entering into the substance of the claim.
24. In reply to FIFA's request for information, the P Football Federation pointed out that there is no professional contract signed between the parties involved in the present matter in their records.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 6 October 2008. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. article 21 par. 2 and 3 of the *Procedural Rules*)
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 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 Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns a dispute with an international dimension between a player and a club in relation to an alleged employment relationship between the two aforementioned parties invoked by the player.
3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2009 and 2010), and considering that the present claim was lodged on 6 October 2008, the 2008 edition of the said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In this respect, the Chamber took note that, according to the Claimant, the parties had allegedly entered into an employment contract on 13 June 2008, which - so the Claimant - was terminated without just cause by the Respondent. Consequently, the Claimant asks that the Respondent be ordered to pay compensation for breach of contract. The Respondent, on the other hand, categorically denies that an employment contract was concluded by and between the parties and, therefore, fully rejects the claim of the Claimant.
5. In view of the dissent between the parties in respect of the basic and preliminary question as to whether or not an employment contract between them had been concluded, the members of the Chamber firstly referred to art. 12 par. 3 of the *Procedural Rules*, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. The application of this principle in the present matter led the members of the Dispute Resolution Chamber to conclude that it was up to the player to prove that the employment

contract, on the basis of which he claims compensation for breach of contract from the club, indeed existed.

6. Having stated the above, the Dispute Resolution Chamber recalled that the Claimant maintained not having received any copy of the employment contract he asserts having signed with the Respondent. However, the Claimant had submitted certain documents in support of his claim, which were in continuation examined in detail by the members of the Chamber.
7. In this respect, the Chamber took note of the invoice dated 13 June 2008 issued by a notary public to the club that refers to a "*signature recognition*" (cf. point I./3. above), which, according to the Claimant, would demonstrate that an employment contract was signed between the parties and authenticated before a notary public, allegedly in accordance with the registration rules of the professional league. The members of the Chamber noted, however, that, whereas the invoice appears to be addressed to the Respondent, it does not refer whatsoever to the Claimant or to the signature of an employment contract. It merely indicates the certification of a signature without any further reference. In the light of these circumstances, the Chamber concurred that such document cannot be considered to corroborate the Claimant's assertion that he had entered into an employment contract with the Respondent.
8. The Chamber then turned its attention to the document presented by the Claimant, which consists of a print-out of the internet homepage of the Respondent dated 13 June 2008, which refers to the hiring by the Respondent of the Claimant (cf. point I./4. above).
9. In this context, the Chamber recalled that the Respondent admitted having entered into employment negotiations with the Claimant and, during this stage, having announced such fact on its internet homepage, but that negotiations were broken off as soon as the Respondent became aware of the Claimant's contractual ties with his former club, which made the Respondent decide not to sign an employment contract with the Claimant. The Chamber also noted that the Claimant acknowledged that he started proceedings against his former club in front of a labour court and that he asserted having duly informed the Respondent of the situation with his former club. In this regard, the members of the Chamber could follow the Respondent's line of defence.
10. On account of the above and in particular of the fact that the Claimant failed to present any other document proving beyond doubt that in fact an employment

contract had been duly signed by and between the Claimant and the Respondent, the Chamber agreed that an internet communication, *i.e.* the print-out of the Respondent's internet homepage, could not be considered sufficient evidence demonstrating a contractual link between the parties.

11. In respect of the foregoing, the members of the Chamber had to conclude that the documents presented by the Claimant were not able to prove beyond doubt that the Claimant and the Respondent had signed a valid and binding employment contract. In this regard, the Dispute Resolution Chamber was of the opinion that, in fact, said documentation could not be considered as evidence strong enough to refute the Respondent's line of argument that the parties involved had conducted negotiations on the player's employment, but finally not concluded any employment contract.
12. As a consequence, the Dispute Resolution Chamber decided that, since the Claimant had not been able to prove beyond doubt that an employment contract had validly been concluded between himself and the Respondent, there was no possibility for the Chamber to enter into the question whether or not such alleged employment contract had been breached.
13. All the above led the Dispute Resolution Chamber to conclude that the claim of the Claimant has to be rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, E, is rejected.

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:

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Secretary General

Encl: CAS directives