

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 club,

Q,

as Claimant/Counter-Respondent

against the player,

C,

as Respondent/Counter-Claimant

regarding an employment-related dispute between the parties

I. Facts of the case

1. On 5 October 2003, the player, C (hereinafter: player or Respondent/Counter-Claimant), signed an employment contract with the club, Q (hereinafter: club or Claimant/Counter-Respondent), valid for the 2003-04 football season. The second clause of the contract stipulated the following: *“The period of the contract is a complete football season 2003/2004, the contract comes into force after the second party passes the technical test, as per a report from the coach of the team and chairman of football staff, then the registration of the second party on the list of the Football Association X, the contract expires at the end of the official competitions of the football season of 2003/2004”.*
2. The Football Association X (hereinafter: FAX) confirmed that the first match of the 2003-04 football season took place on 9 September 2003 and the last match on 29 May 2004.
3. The contract provided that, for the term of the contract, the player would receive USD 50,000 on signing the contract and a monthly salary of USD 5,000 for ten months.
4. The employment contract also provided that the club would pay for two return flights in economy class (A to D) during the term of the contract and would provide the player with accommodation and a car.
5. Furthermore, the contract provided for various payments if the club won certain competitions as well as payments if it won matches or if the player scored.
6. On 5 January 2005, the Claimant/Counter-Respondent submitted a claim to FIFA via the Football Association X requesting payment by the Respondent/Counter-Claimant of USD 20,000. In its claim, the Claimant/Counter-Respondent alleged that the Respondent/Counter-Claimant had arrived in country X, in October 2003 and had gone for a trial at the club. The Claimant/Counter-Respondent claimed that the player had been put on a three-week trial. However, the player allegedly had not demonstrated any of his skills as he was always absent from training and allegedly stated that he first had to sign an employment contract.
7. The Claimant/Counter-Respondent mentioned that, as it wished to give the Respondent/Counter-Claimant a second chance, it had concluded a conditional contract with him for the 2003-04 season, which stipulated that the terms of the contract would come into effect after the player had passed the technical tests.

8. The Claimant/Counter-Respondent claimed that during the trial period, the player had asked the club to pay him part of the amount corresponding to the signing-on fee, which would be returned to the club if the player did not pass the tests and was not registered with the club by the Football Association X. Thus, the Claimant/Counter-Respondent claimed that the player had received USD 20,000 and signed a receipt.
9. The Claimant/Counter-Respondent noted that during the trial period, it had received a letter from the company "R" warning the club about concluding a contract with the player. The Claimant/Counter-Respondent claimed that when the player had been consulted about the letter from the above-mentioned company, he had denied the content. The Claimant/Counter-Respondent was later surprised when the player left the country without informing the club.
10. The Claimant/Counter-Respondent stated that after the player's departure, it had been surprised by his participation with the club J (hereinafter: J) in November, December 2003 and January 2004 and that afterwards the player had apparently signed an agreement with the club, N, for the period from February to July 2004.
11. The Claimant/Counter-Respondent added that the Football Association X had written to the Football Association Y with a view to the player returning the amount of USD 20,000.
12. In conclusion, the Claimant/Counter-Respondent added that given that the player had not been officially transferred to the club for the 2003-04 season and that his participation with the country R and country N clubs had been established during the same season, the club requested reimbursement by the Respondent/Counter-Claimant of the amount of USD 20,000.
13. In a fax dated 11 April 2005, without having yet been informed of the proceedings that had been initiated by the club, the Respondent/Counter-Claimant submitted a claim to FIFA against the club.
14. The Respondent/Counter-Claimant claimed that in the execution of the employment contract in question, the club had voluntarily made out two cheques to him, dated 1 and 2 November 2003, for a total of 292,000 (USD 80,000 according to the Respondent/Counter-Claimant).
15. With regard to the two cheques, the Respondent/Counter-Claimant noted that they had been returned before clearing at the *Bank 1* and the *Bank 2*, the first, dated 1 November 2003, because it was not made out correctly and the second, dated 2 November 2003, because of insufficient funds in the club's account. The

Respondent/Counter-Claimant added that the club had terminated the employment contract without just cause and without notification to him, which had increased both the moral and financial damages caused to the player.

16. Consequently, the Respondent/Counter-Claimant requested that the club be ordered to pay the amount of the cheques representing the player's rights, i.e. 292,000. The Respondent/Counter-Claimant also requested that the club be ordered to pay the total amount of USD 200,000 representing all of the rights stipulated in the employment contract, including salary and championship bonuses as well as the rewards provided for in the contract, because of termination of the contract without just cause. He also requested that the club be ordered to pay him USD 50,000 in damages and interest and to reimburse various fees including his lawyer's fees.
17. As regards the claim put forward by the club, the Respondent/Counter-Claimant maintained that the club had stated that it had terminated the contract on the grounds of his failure to pass the technical tests, but according to the Respondent/Counter-Claimant, the club had not provided proof of the tests and their results.
18. Regarding the receipt for USD 20,000 submitted by the club in its claim, the Respondent/Counter-Claimant stated that he wished to see the original of the document to check its authenticity.
19. The Respondent/Counter-Claimant attached a letter dated 4 October 2003 from the Claimant/Counter-Respondent to J, in which the club informed J of its wish to conclude a loan agreement for the 2003-04 season in exchange for a total amount of USD 600,000.
20. In a fax dated 8 July 2005, J submitted a statement on the club's claim on behalf of the Respondent/Counter-Claimant (the player's legal representative later asked for this statement to be included in the file). The club J mentioned that in response to an express request by the Claimant/Counter-Respondent, the Respondent/Counter-Claimant had travelled to D in October 2003 to undergo technical and medical tests with a view to being recruited by the club. After the player had passed various tests, the Claimant/Counter-Respondent had written to J, on 3 October 2003, confirming that it wished to recruit the player on loan, with an option to buy, for the 2003-04 season.
21. The club J further mentioned that on 5 October 2003 the parties had signed the contracts relating to the loan, stipulating a loan compensation of USD 500,000 for J and a signing-on fee of USD 100,000 for the player. The club J claimed that the

player had received the total of USD 100,000 as follows: USD 20,000 in cash and two cheques for USD 50,000 and USD 30,000 respectively. The club J claimed that it had never received the USD 500,000 provided for in the transfer agreement.

22. The club J added that after spending four weeks in country Q, the Claimant/Counter-Respondent had, for no apparent reason, ordered to drive the player back to the airport in order for him to leave the country.
23. In reply, the Claimant/Counter-Respondent claimed that the player was not entitled to any compensation as he had not provided any services to the club.
24. The Claimant/Counter-Respondent maintained that the player had not explained his sudden departure after the club had confronted him with the contract concluded with the company "R", which had been one of the reasons for not completing the procedure to register the player, in order to avoid legal problems with the player's agent.
25. The Claimant/Counter-Respondent added that the player had not mentioned the fact that the player was playing for two different clubs, while he was under contract to play in country Q for the same 2003-04 season, which showed that the Respondent/Counter-Claimant had not provided any services to the club Q which, would have entitled him to compensation.
26. As regards the cheques, the Claimant/Counter-Respondent mentioned that it had given post-dated cheques with the incorrect signatures until the player's official transfer.
27. As to the USD 20,000, the Claimant/Counter-Respondent argued that it had paid this amount to the player, and stressed that the player was claiming only USD 80,000, which would prove that he had received USD 20,000.
28. In conclusion, the Claimant/Counter-Respondent stated that it was clear, from all of the documents and information, that the player had not been officially transferred to the Claimant/Counter-Respondent for the 2003-04 season. The Claimant/Counter-Respondent added that neither the player nor his club had suffered any damages during his stay in country Q, and that it was clear that the player had been transferred from the club C to a club N during the 2003-04 season and that he had not rendered any services for the Claimant/Counter-Respondent.
29. The Claimant/Counter-Respondent therefore stated that it wished to recover the USD 20,000, less compensation for the player's training period to be determined by FIFA.

30. In reaction, as regards the club's argument that he had joined J, the Respondent/Counter-Claimant stated that he did not see what influence that had on this affair. He maintained that the Claimant/Counter-Respondent had terminated the contract without just cause and had driven him from the club. Furthermore, the Claimant/Counter-Respondent had recognised his rights by signing the cheques and had caused the player both moral and material damages.
31. The Respondent/Counter-Claimant indicated that during the period from 5 October 2003 to 31 December 2004, he had been at his original club, J, but had not been under contract.

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 5 January 2005. Consequently, the Rules Governing the Practice and Procedures of the Dispute Resolution Chamber (edition 2002; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 par. 2 and 3 of the 2008 edition of the Procedural Rules in combination with art. 18 par. 2 and 3 of the 2005 edition of the Procedural Rules).
2. Subsequently, the members of the Chamber referred to art. 2 and 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 for/on the Status and Transfer of Players (editions 2005 to 2010), as well as art. 42 of the Regulations for the Status and Transfer of Players (edition 2001), the Dispute Resolution Chamber is competent to deal with the matter at stake.
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 for/on the Status and Transfer of Players (editions 2005 to 2010), considering that the present claim was lodged on 5 January 2005 and that the employment contract at the basis of the claim was signed on 5 October 2003, the 2001 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 acknowledged that the Claimant/Counter-Respondent and the

Respondent/Counter-Claimant signed an employment contract on 5 October 2003 valid for the 2003-04 season.

5. The members of the Chamber took due note of the second contractual clause, in accordance with which *"The period of the contract is a complete football season 2003/2004, the contract comes into force after the second party passes the technical test, as per a report from the coach of the team and chairman of football staff, then the registration of the second party on the list of the Football Association X, the contract expires at the end of the official competitions of the football season of 2003/2004"*.
6. The DRC noted that the Claimant/Counter-Respondent asserts that said employment contract had been concluded between the parties on the condition that it would come into effect after the player had passed some technical tests. In fact, according to the Claimant/Counter-Respondent, the employment contract was signed while the Respondent/Counter-Claimant had been on a three-week trial at the club in October 2003. According to the Claimant/Counter-Respondent, during this trial period, it paid the amount of USD 20,000 to the Respondent/Counter-Claimant as part of the contractual signing-on fee at the latter's specific request, which amount was to be reimbursed to the Claimant/Counter-Respondent in the event of the player failing the technical tests and not being registered by the Football Association X. Furthermore, the Claimant/Counter-Respondent asserts that the player had not been formally transferred to the club for the 2003-04 season.
7. With regard to the above-cited contractual clause relating to technical tests (cf. points I./1. and II./5. above), the Chamber acknowledged that the assessment of the performance of the Respondent/Counter-Claimant on the pitch is left fully to the discretion of the Claimant/Counter-Respondent. In the light of such potestative character of the pertinent part of the contractual clause, and in accordance with the Chamber's constant jurisprudence in this regard, the members of the Chamber wished to highlight that the condition contained in the second clause of the employment contract is not acceptable and could not be validly invoked as a legal basis for the entry into force and/or a unilateral termination of an employment contract.
8. In addition to being potestative, said contractual condition clearly goes against art. 30 of the Regulations, in accordance with which *inter alia* the validity of an employment contract between a player and a club cannot be made conditional upon the positive results of a medical examination, or technical tests for that matter. In fact, the player's prospective new club is required to make any necessary investigations, studies, tests and/or medical examination or to take any

appropriate action before concluding the contract (cf. art. 30 par. 2 of the Regulations).

9. Therefore, the Chamber concurred that the Claimant/Counter-Respondent and the Respondent/Counter-Claimant had entered into a valid employment contract on 5 October 2003.
10. According to the Claimant/Counter-Respondent, the Respondent/Counter-Claimant left the country without prior notice or authorisation and, subsequently, appeared to have rendered his services to J as from November 2003 until January 2004 and afterwards to another club.
11. The members of the Chamber noted that, on account of the above, the Claimant/Counter-Respondent asks that the Respondent/Counter-Claimant be ordered to reimburse the amount of USD 20,000, less compensation for the time the player effectively trained at the Claimant/Counter-Respondent.
12. The Chamber took note that the Respondent/Counter-Claimant, for his part, rejects such claim. What is more, the Respondent/Counter-Claimant holds that the Claimant/Counter-Respondent had terminated the employment contract without just cause and, consequently, the Respondent/Counter-Claimant claims payment of compensation for breach of contract totalling USD 200,000 as well as USD 50,000 in damages and interest. In addition, according to the Respondent/Counter-Claimant, the Claimant/Counter-Respondent had made out two cheques to his benefit totalling the equivalent of USD 80,000, which cheques, though, were returned by the bank and could not be cashed. In this respect, the Respondent/Counter-Claimant submits that by having signed the pertinent cheques, the Claimant/Counter-Respondent recognised his right to receive the USD 80,000. Said cheques having remained unpaid, the Respondent/Counter-Claimant asks that the Claimant/Counter-Respondent be ordered to pay USD 80,000 in addition to the aforementioned compensation for breach of contract and damages.
13. Given the parties' conflicting position as regards the apparent early termination of the employment contract, the members of the Chamber then proceeded to analyse in greater detail the circumstances surrounding such early termination of the employment relationship between the parties.
14. From the documentation on file as well as the statements made by the parties, the Chamber noted that the Respondent/Counter-Claimant went from his club in the country Y to the country X in order to join the Claimant/Counter-Respondent, probably in view of a loan. The Claimant/Counter-Respondent seems to have wished to examine the player's technical skills, whereas the Respondent/Counter-

Claimant asked that an employment contract be signed. The parties then signed an employment contract including the condition contained in aforementioned second contractual clause (cf. points I./1. and II./5. above), which condition, as established above, is considered invalid and, thus, not acceptable. Consequently, as already established above, the parties entered into a valid employment contract.

15. The Chamber further noted that the Respondent/Counter-Claimant had not explicitly contested the allegation of the Claimant/Counter-Respondent that he received an advance payment of USD 20,000 from the club.
16. According to the Claimant/Counter-Respondent, three weeks after his arrival at the club, the Respondent/Counter-Claimant left the country X without prior notification or the club's authorisation. The Chamber further noted from the documentation on file that it was undisputed that the Respondent/Counter-Claimant ceased rendering his services to the Claimant/Counter-Respondent and had left the country X after said three weeks. In addition, the members of the Chamber took into account that the Respondent/Counter-Claimant failed to present any supporting documentation demonstrating that he had the authorisation from the Claimant/Counter-Respondent or any valid reasons to leave the club. From the player's statements it was further noted that the Respondent/Counter-Claimant immediately re-joined his club of origin, R, after his departure from country Q.
17. In the light of the above circumstances, the Chamber concurred that the Respondent/Counter-Claimant had acted in breach of the employment contract by leaving the club without authorisation or any valid reasons in October 2003.
18. Whereas the Respondent/Counter-Claimant was considered by the Chamber to have acted in breach of the employment contract, the Chamber wished to highlight that the Claimant/Counter-Respondent, on the other hand, has not shown genuine interest in retaining the services of the player and merely asked that the Respondent/Counter-Claimant be ordered to reimburse the amount of USD 20,000, less compensation for the services rendered by the Respondent/Counter-Claimant during three weeks in October 2003.
19. On account of the above, the members of the Chamber concurred that the pertinent employment contract had been terminated at the Respondent/Counter-Claimant's fault and that, therefore, the claim of the Respondent/Counter-Claimant had to be rejected.
20. Reverting its attention to the claim of the Claimant/Counter-Respondent, *i.e.* the reimbursement of the amount of USD 20,000 by the Respondent/Counter-

Claimant, the Chamber took into account that the Respondent/Counter-Claimant had rendered his services to the club during three weeks in October 2003. In this respect, the Chamber agreed that the Respondent/Counter-Claimant shall receive compensation for such services and, consequently, decided that the Respondent/Counter-Claimant is entitled to receive his salary on a *pro rata temporis basis*, i.e. USD 3,750 relating to his monthly salary for October 2003 (USD 5,000; cf. the pertinent employment contract) for three weeks. In this context, the members of the Chamber took into account that the Respondent/Counter-Claimant had already received USD 20,000 from the Claimant/Counter-Respondent (cf. point II./15. above).

21. Consequently, the Chamber decided that the claim of the Claimant/Counter-Respondent is partially accepted and that the Respondent/Counter-Claimant must reimburse the amount of USD 16,250 to the Claimant/Counter-Respondent.
22. The Chamber concluded its deliberations in the present matter by rejecting any further claim of the Claimant/Counter-Respondent.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant / Counter-Respondent, Q, is partially accepted.
2. The Respondent / Counter-Claimant, C, has to pay to the Claimant / Counter-Respondent the amount of USD 16,250 within 30 days as from the date of notification of this decision.
3. Any further claims lodged by the Claimant / Counter-Respondent, Q, are rejected.
4. In the event that the aforementioned amount is not paid within the stated time limit, interest at the rate of 5% *p.a.* will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.
5. 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.
6. The counterclaim of the Respondent / Counter-Claimant, C, 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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Encl.: CAS directives