Decision of the
Dispute Resolution Chamber (DRC) judge

passed in Zurich, Switzerland, on 9 May 2011,

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

on the claim presented by the player,

D,

as *Claimant*

against the club,

M,

as *Respondent*

regarding an employment-related dispute
between the parties

I. Facts of the case

1. On 25 September 2008, the player, D (hereinafter: player or Claimant), and the club, M (hereinafter: club or Respondent), signed an employment contract valid as from the day of signature until 31 May 2009.

2. In accordance with the employment contract, the Claimant was to receive eight monthly wages of 97,200 gross each (according to the Claimant equalling EUR 15,000) and a total of bonus payments of "50 points" of 8,870 gross per point (according to the Claimant equalling EUR 1,330).

3. On 18 January 2009, the Claimant and the Respondent signed an agreement in accordance with which the player was allowed to travel abroad and had to return on 20 January 2009. The agreement further stipulates that if the Claimant did not return to country X by the set date, the employment contract would be cancelled and the Respondent would pay his salary for the months of October, November, and December 2008, as well as his salary until 20 January 2009, a bonus amounting to 13 points and *"there would be no demands or claims from both sides"*.

4. This agreement further contains the indication, along with the parties' signature, that one month and three points had been remitted to the Claimant.

5. On 20 July 2009, the Claimant lodged a claim against the club in front of FIFA maintaining that after having entered into the employment contract, he had not received any salary payments for a certain number of months and the parties had agreed that he was allowed to transfer to another club without any compensation falling due.

6. The Claimant points out that, in this context, the parties signed the agreement dated 18 January 2009.

7. The Claimant acknowledged having received the one month salary and three points bonus as indicated in the aforementioned agreement as well as a further payment of EUR 10,000 on 3 April 2009.

8. Consequently, the Claimant asks to be awarded payment of the following monies:
    a. Salary for November 2008: EUR 15,000
    b. Salary for December 2008: EUR 15,000
    c. Salary for January 2009: EUR 10,000
    d. Bonus based on 13 points: EUR 17,290
    e. Total: EUR 57,290 minus the EUR 10,000 paid in April 2009 is EUR 47,290

9. In addition, he claims payment of interest of 6% *p.a.* increasing his claim to the total amount of EUR 50,127.40.

10. The Respondent, for its part, rejects the claim of the Claimant stating that the amount of EUR 47,290 is not accurate.

11. The Respondent asserts that, on 27 May 2009, it transferred the amount of EUR 10,000 to the player, that it paid EUR 7,200 to a company (referred to as "Y") for private purchases of the Claimant and that it paid EUR 9,000 to the country X tax authorities.

12. In reaction, the Claimant points out that the amount of EUR 7,200 has no relation to the case at hand and that he is not aware of the company that the Respondent is referring to. Furthermore, the Claimant considers that said tax payment has no relation to his claim.

13. With respect to the payment of EUR 10,000 that the Respondent asserts having remitted on 27 May 2009, the Claimant points out that EUR 10,000 were paid to him, which he consequently deducted from the monies the club still owes him.

14. In its final position, the Respondent rejects the Claimant's arguments and maintains its position. In addition, the Respondent submitted a copy of a letter from the lawyer of the company "Y" putting the club in default of payment of computer hardware it allegedly delivered to the Claimant in the amount of 30,000.

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 20 July 2009. Consequently, the 2008 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: the Procedural Rules) is applicable to the matter at hand (cf. art. 21 par. 2 and par. 3 of the Procedural Rules).

2. Subsequently, the DRC judge referred to art. 3 par. 2 and 3 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and 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 an 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 2 of the Regulations on the Status and Transfer of Players (editions 2009 and 2010) and considering that the present claim was lodged on 20 July 2009, 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 acknowledged that, on 25 September 2008, the Claimant and the Respondent signed an employment contract and that, subsequently, on 18 January 2009, an agreement was signed by and between the parties, in accordance with which *inter alia* the Respondent would pay to the Claimant his salary as from October 2008 until 20 January 2009 as well as a bonus amounting to 13 points, should the Claimant not have returned to the Respondent by 20 January 2009.

5. From the contents of the aforementioned agreement and the Claimant's representation of the circumstances leading to its signature, the DRC judge understood that the parties had mutually agreed to terminate the employment contract.

6. In continuation, the DRC judge noted that, according to the Claimant, the Respondent failed to remit the total amount of EUR 47,290 on the basis of said agreement, whereas the Respondent, for its part, rejected such claim and indicated that the amount claimed by the Claimant is inaccurate and, thus, implicitly acknowledged that it owes monies to the Claimant. In this context, the Respondent alleged that it had paid the total amount of EUR 26,200 partially directly to or on behalf of the Claimant. The DRC judge noted, however, that the Respondent's allegations with respect to said payment of EUR 26,200 were rejected by the Claimant.

7. Therefore, the DRC judge proceeded to closely examine the arguments and related documentation submitted by the Respondent in its defence, bearing in mind 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.

8. Having stated the above, the DRC judge took into account that the Respondent has not presented any documentary evidence in support of its allegation that it paid EUR 9,000 in connection with the Claimant to the X tax authorities.

9. In continuation, the DRC judge carefully examined the document presented by the Respondent in connection with its allegation that it paid EUR 7,200 to a local company (referred to as "Y") for private purchases of the Claimant. In this respect, the DRC judge noted that said documentation, which consists of a default notice addressed by the

relevant creditor to the Respondent, referring to *"your debt to Y"* for the delivery of computer hardware to *"Mr. D"*, did not demonstrate that in fact such amount had been paid by the Respondent to the relevant creditor and that the Claimant would be indeed liable to pay said amount.

10. The DRC judge then reverted to the allegation of the Respondent that it remitted EUR 10,000 to the Claimant on 27 May 2009. After a careful study of the document presented by the Respondent in this regard, the DRC judge deemed that such document was rather vague and would appear to be a print-out of an electronic payment instruction dated 25 May 2009, with value date of 27 May 2009, which in itself does not demonstrate that the related payment order has in fact been carried out.

11. In light of the above, the DRC judge had to conclude that the documents presented by the Respondent were not able to prove beyond doubt that the Respondent had indeed paid the total amount of EUR 26,200, either partially directly to or on behalf of the Claimant. Consequently, and bearing in mind the general legal principle contained in art. 12 par. 3 of the Procedural Rules, the DRC judge decided that the arguments of the Respondent had to be rejected.

12. In continuation, the DRC judge reverted to the claim of the Claimant, who asked to be awarded payment of his salaries as from November 2008 until January 2009, plus a bonus based on 13 points in accordance with the agreement that was signed between the parties on 18 January 2009 (cf. point I./3. above). In this respect, the DRC judge noted that the Claimant's claim is based on amounts converted in Euros (EUR), whereas said agreement does not indicate any amounts or currency. Furthermore, in accordance with the employment contract the Claimant was to receive his remuneration in X (X). Therefore, the DRC judge concluded that his decision shall be based on amounts in accordance with the employment contract.

13. Having stated the above, the DRC judge recalled that in accordance with the employment contract, the Claimant was to receive a gross monthly salary of 97,200 and bonus payments of 8,870 gross per point. Furthermore, the DRC judge took into account that according to the agreement dated 18 January 2009, the Claimant had already received one month salary - October 2008, which is not included in the claim of the Claimant - as well as a bonus payment of three points. Consequently, with respect to the 13 points bonus payment claimed by the Claimant, the DRC judge concluded that only ten points could be taken into consideration.

14. On account of the above, in particular of the agreement dated 18 January 2009 and of the consideration under point II./11. above, the DRC judge decided that the Claimant is entitled to receive the total gross amount of 347,900, consisting of the salaries for the

months of November 2008 and December 2008, 20 days of January 2009, and ten bonus points.

15. In addition, as regards the Claimant's claim for payment of interest on the outstanding amount, in accordance with the constant jurisprudence of the Dispute Resolution Chamber, the DRC judge decided that the Claimant is entitled to receive interest at the rate of 5% *p.a.* on the amount of 347,900 as of 21 January 2009.

16. Therefore, the DRC judge decided that the Respondent is ordered pay to the Claimant the gross amount of 347,900 plus 5% interest *p.a.* as of 21 January 2009 until the date of effective payment.

17. The DRC judge concluded his deliberations in the present matter by rejecting any further request filed by the Claimant.

III. Decision of the DRC judge

1. The claim of the Claimant, D, is partially accepted.

2. The Respondent, M, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the gross amount of 347,900 plus interest at the rate of 5% *p.a.* applicable as of 21 January 2009 until the date of effective payment.

3. In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

4. Any further claim lodged by the Claimant is rejected.

5. The Claimant is directed to inform the Respondent 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:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org
www.tas-cas.org

For the DRC judge:

Jérôme Valcke
Secretary General

Encl: CAS directives